Supreme Court, U. S.
FILED
APR 14 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-611

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

C. D. KASMIR AND JERRY A. CANDY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 18, 1974
CERTIORARI GRANTED JANUARY 27, 1975

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

Title of Case	*Attorneys*
UNITED STATES OF AMERICA and JAMES S. MABREY, Special Agent of the Internal Revenue Service vs C.D. KASMIR and JERRY A. CANDY	For plaintiff: Frank McCown, USAtty Ken J. Mighell, AUSAtty For defendant: Akin, Gump, Strauss, Hauer & Feld Edward A. Copley 2800 Republic Nat'l Bank Bldg. Dallas, Tx 75201 741-2111 -and- Cyril David Kasmir, Pro Se 601 Kirby Bldg. Dallas, Tx 75201 744-5511

Statistical Record	*Date 1973*	*Name or Receipt No.*	*Rec.*	*Disb.*
J.S. 5 mailed Not mailed	3-21	US		
J.S. 6 mailed (Cleared 3-73)	4-16	F. R. Kasmir (appeal)	5.00	
Basis of Action: Petition to enforce Internal Revenue Service Summons, Section 7402(b) & 7604(a) of Internal Revenue Code of 1954.	4-20	SF 201-430		5.00

1973	*Proceedings*	*Date Order or Judgment Notes*
Mar. 21	Filed PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS and issued SUMMONS (2).	
Mar. 21	Filed ORDER TO SHOW CAUSE, appear 3-28-73 at 9:00 am. & Issued WRIT (2).	RMH
Mar. 26	Filed MARSHALS RETURN ON WRIT (2) executed 3-22-73 by serving C. D. Kasmir; & by serving James A. Candy.	
Mar. 27	Filed Defendant's RESPONSE TO ORDER TO SHOW CAUSE & MOTION TO QUASH SUMMONS.	
Mar. 28	Filed Defendant's HEARING MEMORANDUM OF POINTS & AUTHORITIES.	
Mar. 27	Filed TRIAL MEMORANDUM OF LAW OF THE UNITED STATES.	
Mar. 28	Filed ORDER that C. D. Kasmir and Jerry A. Candy obey summonses served upon them by appearing before Special Agent Mabrey on April 16, 1973, at 10:00 A.M. Copies to counsel of record.	RMH
Apr. 6	Filed Respondents' MOTION FOR STAY.	
Apr. 6	Filed ORDER GRANTING STAY. The execution of any proceedings to enforce the Order entered March 28, 1973, is stayed pending determination of Respondents' appeal, provided the Respondents post a cash deposit in the sum of $250.00 in lieu of a bond, on or before April 9, 1973. Copies mailed to counsel.	RMH
Apr. 16	Filed RESPONDENT'S BOND that they have deposited with the registry of the U.S. Clerk at Dallas the sum of 250.00 cash on April 6, 1973, pursuant to the Order of the Court.	

Apr. 16	Filed NOTICE OF APPEAL by Defendants from the Order directing the Defendants to obey the summons served upon them by Special Agent Mabrey entered on March 28, 1973. (copy mailed to Court of Appeals, & given to Ken Mighell by hw)	
**		
Apr. 23	Filed TRANSCRIPT OF PROCEEDINGS held March 28, 1973 with exhibits: GX-1 thru 7	
Apr. 23	Mailed record to Court of Appeals with Transcript of Proceedings and listed exhibits.	
Apr. 20**	Filed RESPONDENT'S BOND FOR COSTS ON APPEAL ($250.00)	
Apr. 20**	Filed Letter to Clerk from Cyril Kasmir requesting transcript of proceedings.	
Apr. 24	Mailed supplemental record to Court of Appeals (Respondent's Bond for Costs on Appeal)	

Certified a true copy of an instrument
on file in my office on April 24, 1973
Joseph XXXXX, Jr., Clerk, U.S. District
Court, Northern District of Texas
By Rosemary Edmeston Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and JAMES S. MABREY, Special Agent of the Internal Revenue Service, PETITIONERS	CIVIL ACTION No. CA-3-6973-D
v.	
C. D. KASMIR and JERRY A. CANDY, RESPONDENTS	

(Filed: March 21, 1973)

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

The United States of America and James S. Mabrey, Special Agent of the Internal Revenue Service, by their attorney, Frank D. McCown, United States Attorney for the Northern District of Texas, show unto this Court as follows:

I

This is a proceeding brought under the authority of Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954 to judicially enforce two Internal Revenue Service summonses.

II

The petitioner, James S. Mabrey, is a Special Agent of the Internal Revenue Service, employed in the Intelligence Division of the Office of the District Director of Internal Revenue in Dallas, Texas.

III

(a) The respondent, C. D. Kasmir, maintains an office at 601 Kirby Building, Dallas, Texas.

(b) The respondent, Jerry A. Candy, maintains an office at 1407 Main, Suite 1422, Dallas, Texas.

IV

Special Agent James S. Mabrey is conducting an investigation for the purpose of ascertaining the correctness of income tax returns filed by Edward J. Mason and Rae A. Mason for the years 1969 through 1971, as is set forth in the affidavit of Special Agent James S. Mabrey attached hereto as Exhibit A.

V

The respondents, C. D. Kasmir and Jerry A. Candy, are in possession and control of testimony and documents concerning the above-described investigation.

VI

On January 5, 1973, an Internal Revenue Service summons, a copy of which is attached hereto as Exhibit B, was issued by the petitioner, James S. Mabrey, directing the respondent, C. D. Kasmir, to appear before the said James S. Mabrey, on January 15, 1973 at 9:00 a.m., at Room 11G47, 1100 Commerce, Dallas, Texas, to testify and to produce for examination books, records and other papers, all of which are fully described in the summons attached hereto as Exhibit B. A copy of this summons was personally served on C. D. Kasmir, on January 5, 1973, as is set out in the affidavit of the petitioner, James S. Mabrey, attached hereto as Exhibit B.

VII

On January 5, 1973, an Internal Revenue Service summons, a copy of which is attached hereto as Exhibit C, was issued by the petitioner, James S. Mabrey, directing the respondent, Jerry A. Candy, to appear before the said James S. Mabrey, on January 15, 1973 at 9:00 a.m., at Room 11G47, 1100 Commerce, Dallas, Texas, to testify. A copy of this summons was personally served on Jerry A. Candy, on January 5, 1973, as is set out in the affidavit of the petitioner, James S. Mabrey, attached hereto as Exhibit B.

VIII

On January 5, 1973, the respondents, C. D. Kasmir and Jerry A. Candy, appeared but refused to comply with the

summonses by testifying or by producting the books, records and other documents demanded in the summonses. The respondents' refusal to comply with the summonses continues to date as is set forth in the affidavit of James S. Mabrey, attached hereto as Exhibit A.

WHEREFORE, the petitioners, the United States of America and James S. Mabrey, respectfully pray:

1. That this Court enter an order directing the respondents, C. D. Kasmir and Jerry A. Candy, to show cause, if any they have, why they should not comply with and obey the summonses attached hereto as Exhibits B and C in each and every requirement thereof;

2. That this Court enter an order directing the respondents, C. D. Kasmir and Jerry A. Candy, to obey the summonses attached hereto as Exhibits B and C in each and every requirement thereof by ordering the attendance and production of the records as is required and called for by the terms of the summonses before the petitioner, James S. Mabrey, or any other proper officer of the Internal Revenue Service, at such time and place as hereafter may be fixed by the petitioner, James S. Mabrey, or any other proper officer of the Internal Revenue Service, and by ordering the respondents, C. D. Kasmir and Jerry A. Candy, to appear for the purpose of giving testimony concerning the tax liability of Edward J. Mason and Rae A. Mason as to each or any of the years 1969 through 1971; and

3. That this Court grant such other and further relief as it deems just and proper.

FRANK D. McCOWN
United States Attorney

By: s/ Kenneth J. Mighell
Assistant United States Attorney

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and JAMES S. MABREY, Special Agent of the Internal Revenue Service, PETITIONERS v. C. D. KASMIR and JERRY A. CANDY,	CIVIL ACTION No.

AFFIDAVIT OF JAMES S. MABREY

STATE OF TEXAS. }
COUNTY OF DALLAS } SS

JAMES S. MABREY, being first duly sworn, deposes and says:

1. He is a Special Agent employed in the Intelligence Division of the Office of the District Director of Internal Revenue at Dallas, Texas.

2. In his capacity as a Special Agent, he is conducting an investigation for the purpose of ascertaining the correctness of income tax returns filed by Edward J. Mason and Rae A. Mason, for the years 1969 through 1971.

3. As a part of the above investigation, on January 5, 1973, he issued an Internal Revenue Service summons to C. D. Kasmir, directing him to appear before him on January 15, 1973, to testify and to produce for examination the following records:

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970 and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970 and 1971.
3. Retained copies of reports and other correspondence between Tannenbaum Bindler & Lewis and Dr. E. J. Mason during 1969, 1970 and 1971.

A copy of this summons is attached to these pleadings as Exhibit B.

4. As part of the above investigation, on January 5,

1973, he issued an Internal Revenue Service summons to Jerry A. Candy directing him to appear before him on January 15, 1973 to testify. A copy of this summons is attached to these pleadings as Exhibit C.

5. On January 5, 1973, the petitioner, Special Agent James S. Mabrey, served the Internal Revenue Service summonses described in paragraphs 3 and 4 above on the respondents, C. D. Kasmir and Jerry A. Candy, by personally handing a copy to each of them.

6. On January 15, 1973, the respondents, C. D. Kasmir and Jerry A. Candy, appeared but refused to comply with the summonses by producing the books, records and other documents demanded in the summonses or by giving testimony as to the matters requested in said summonses. The respondents' refusal to comply with the summonses continues to the date of this affidavit.

7. It is necessary to examine the books, records and other papers demanded by the summonses and to take the testimony of C. D. Kasmir and Jerry A. Candy, on order to ascertain the correctness of income tax returns filed by Edward J. Mason and Rae A. Mason, for the years 1969 through 1971.

s/ James S. Mabrey
AFFIANT

Subscribed and Sworn to before me, this 12th day of March, 1973

s/ Bonnie J. Wilcox
NOTARY PUBLIC in and for said
State and County.

My Commission expires:

(SEAL)

SUMMONS

In the matter of the tax liability of
EDWARD J. and RAE A. MASON
2516 Forest Ave. (or)
2207 Millermore, Dallas, Texas

Internal Revenue District of Dallas, Texas

Period(s) 1969, 1970, and 1971

The Commissioner of Internal Revenue

To C. D. Kasmir
At Fishman and Associates, Dallas, Texas

Greetings: You are hereby summoned and required to appear before James S. Mabrey, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

the following records of Tannebaum Bindler & Lewis.

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970, and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970, and 1971.
3. Retained copies of reports and other correspondence between Tannebaum Bindler & Lewis and Dr. E. J. Mason during 1969, 1970, and 1971.

Place and time for appearance:

at Room 11G47, 1100 Commerce, Dallas, Texas on the 15th day of January, 1973 at 9:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code this 5 day of January, 1973

James S. Mabrey — Special Agent
Signature — Title

EXHIBIT B

CERTIFICATE OF SERVICE OF SUMMONS

(Pursuant to Section 7503, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date 1-5-73 Time 0905

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed,

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature James S. Mabrey Title Special Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

SUMMONS

In the matter of the tax liability of
EDWARD J. and RAE A. MASON
2516 Forest Ave. (or)
2207 Millermore, Dallas, Texas

Internal Revenue District of Dallas, Texas

Period(s) 1969, 1970, and 1971

The Commissioner of Internal Revenue

To Jerry A. Candy
Tannebaum Bindler & Lewis
At Dallas, Texas

Greetings: You are hereby summoned and required to appear before James S. Mabrey, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

Testimony.

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970, and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970, and 1971.
3. Retained copies of reports and other correspondence between Tannebaum Bindler & Lewis and Dr. E. J. Mason during 1969, 1970, and 1971.

Place and time for appearance:

at Room 11G47, 1100 Commerce, Dallas, Texas on the 15th day of January, 1973 at 9:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code this 5 day of January, 1973

James S. Mabrey — Special Agent
Signature — Title

EXHIBIT C

CERTIFICATE OF SERVICE OF SUMMONS

(Pursuant to Section 7503, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
1-5-73	0905

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed,

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature James S. Mabrey Title Special Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Order to Show Cause

(Number and title omitted) (Filed: March 21, 1973)

Upon the Petition, the Exhibit attached hereto, the Affidavit of James S. Mabrey, Special Agent of the Internal Revenue Service, and upon the motion of Frank D. McCown, United States Attorney for the Northern District of Texas:

It Is Ordered that C. D. Kasmir and Jerry A. Candy appear before the District Court of the United States for the Northern District of Texas, in that branch thereof presided over by the undersigned, in his courtroom in the United States Courthouse in Dallas, Texas, on March 28, 1973, at 9:00 A.M., to show cause why they should not be compelled to testify and produce the records demanded in the Internal Revenue Service summonses served upon them on January 5, 1973, by the petitioner, Special Agent James S. Mabrey.

LET A COPY OF THIS ORDER, together with the Petition and the Exhibits attached thereto be served upon C. K. Kasmir and Jerry A. Candy, on or before March 22, 1973.

IT IS FURTHER ORDERED that said respondents shall file a written response to said Petition within five (5) days after service of said Petition and attached Exhibits.

DATED at Dallas, Texas, this 21 day of March, 1973.

s/ Robert M. Hill
UNITED STATES DISTRICT JUDGE

Response to Order to Show Cause and Motion to Quash Summons

(Number and title omitted) (Filed: March 27, 1973)

Now come C. D. KASMIR and JERRY A. CANDY, the Respondents herein, and in response to the Petition to Enforce Internal Revenue Service Summons filed herein and in response to the Order to Show Cause in this proceeding would show unto this Court the following:

1. The Respondents neither admit nor deny the allegations contained in Paragraph I of the Petition to Enforce Internal Revenue Summons.

2. The Respondents admit the allegations contained in Paragraph II of the said Petition.

3. (a) The Respondents admit the allegations contained in Sub-paragraph (a) of Paragraph III of the said Petition. (b) The Respondents deny the allegations contained in Sub-paragraph (b) of Paragraph III of the said Petition and allege that the firm of Tannebaum, Bindler & Lewis maintains an office at such address, and that such firm employs the Respondent, JERRY A. CANDY, as an employee.

4. The Respondents deny the allegations contained in Paragraph IV of the said Petition for lack of knowledge or information sufficient to form a belief as to the truth or accuracy thereof.

5. The Respondents deny the allegations contained in Paragraph V of the said Petition.

6. The Respondents admit the allegations contained in Paragraph VI of the said Petition, except they deny all allegations set forth in the affidavit of the Petitioner, JAMES S. MABREY, not specifically admitted herein.

7. The Respondents admit the allegations contained in Paragraph VII of the said Petition, except they deny all allegations set forth in the affidavit of the Petitioner, JAMES S. MABREY, not specifically admitted herein.

8. The Respondents admit the allegations contained in Paragraph VIII of the said Petition, except they deny the accuracy of the date "January 5, 1973" and allege that such date should read "January 15, 1973."

9. For further defense to the said Petition filed herein, the Respondents state the following:

(a) On January 5, 1973, the Respondent JERRY A. CANDY was served with a Summons, a copy of which is attached to the said Petition as Exhibit "C". The Summons ordered him to appear before JAMES S. MABREY, an officer of the Internal Revenue Service, to give testimony . . . and to produce for examination the following:

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970 and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970 and 1971.
3. Retained copies of reports and other correspondence between Tannebaum, Bindler & Lewis and Dr. E. J. Mason during 1969, 1970 and 1971.

(b) The Respondent JERRY A. CANDY, in response to the Summons, appeared and, by means of a written statement, a copy of which is marked as Exhibit "A", is attached hereto and is incorporated herein, explained and now alleges that at the time he was served with the Summons he did not possess any of the above-described documents. He also explained and now alleges that prior to the time he was served with the Summons and in response to the direction and request of DR. EDWARD J. MASON, and in compliance with the direction of his employer, SAMUEL H. TANNEBAUM, he delivered all of the above-described documents to DR. EDWARD J. MASON.

(c) On January 5, 1973, the Respondent CYRIL DAVID KASMIR was served with a Summons, a copy of which is attached to the said Petition as Exhibit "B". The Summons ordered him to appear before JAMES S. MABREY, an officer of the Internal Revenue Service, to give testimony . . . and to produce for examination:

the following records of Tannebaum, Bindler & Lewis.

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970 and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970 and 1971.
3. Retained copies of reports and other correspondence between Tannebaum, Bindler & Lewis and Dr. E. J. Mason during 1969, 1970 and 1971.

(d) The Respondent, CYRIL DAVID KASMIR, in response to the Summons, appeared and, by means of a

written statement, a copy of which is marked as Exhibit "B", is attached hereto and is incorporated herein, explained and now alleges that he had been employed by the taxpayers to represent them with respect to their income tax liability for the years 1969, 1970 and 1971, in connection with the audit of their income tax returns and examination presently being made by the Internal Revenue Service and that, by virtue of said employment, he refused to answer any questions . . . based on the attorney-client privilege. He further explained and now alleges that he refused to produce any documents, books, records or papers based upon the Fourth Amendment's protection against unreasonable searches and seizures and upon the Fifth Amendment's privilege against self-incrimination asserted at the direction of and on behalf of the taxpayers.

(e) On Wednesday, January 3, 1973, which was prior to the date of the service of the Summons, the taxpayers employed the Respondent CYRIL DAVID KASMIR, who is a duly licensed and practicing attorney and a member of The State Bar of Texas, to represent them as legal counsel in connection with matters involving their federal income taxes for the years 1969, 1970 and 1971.

(f) On that same day, Wednesday, January 3, 1973, the Respondent CYRIL DAVID KASMIR, acting in his capacity as attorney for the taxpayers, employed the Respondent JERRY A. CANDY to assist him in analyzing the books, records, papers and documents of the taxpayers. A copy of the Employment Agreement is marked Exhibit "C", is attached hereto and is incorporated herein.

(g) On Thursday, January 4, 1973, which was prior to the date of the service of the Summons, at the direction and request of DR. EDWARD J. MASON and in compliance with the direction of his employer, SAMUEL H. TANNEBAUM, the Respondent JERRY A. CANDY delivered the following files to DR. EDWARD J. MASON: 1969, 1970 and 1971 Tax Files, Quarterly Tax Files, Bookkeeping Files, 1970 and 1971 Financial Statements Files and 1969 Cash Disbursements, which included work papers prepared by the accountants and all books, records and other documents in the possession of the said accountants that related to the taxpayers. At the time of delivery, DR. EDWARD J. MASON executed a letter that was, by its terms, to serve as a receipt for the documents. The letter is marked Exhibit "D", is attached hereto and is incorporated herein. The letter is incorrectly dated January 3, 1973. These files and other documents were delivered to DR. EDWARD J. MASON on January 4, 1973, and the letter was signed by DR. EDWARD J. MASON on January 4, 1973. It was the understanding of the Respondent JERRY A. CANDY, at the time of the delivery to DR. EDWARD J. MASON on January 4, 1973, that he was relinquishing to the taxpayer the rightful, indefinite and legitimate possession of the said documents and files. Since that time, the said files and the other said books, records and documents have not been in the possession of the Respondent JERRY A. CANDY.

(h) For the years 1969, 1970 and 1971, the taxpayers had employed the firm of Tannebaum, Bindler & Lewis, Certified Public Accountants, to prepare their federal income tax returns. The firm of Tannebaum, Bindler & Lewis did prepare the taxpayers' federal income tax returns for the years 1969, 1970 and 1971. The Respondent JERRY A. CANDY, a Certified Public Accountant, became an employee of the firm of Tannebaum, Bindler & Lewis in December, 1971. The Respondent JERRY A. CANDY did not prepare the taxpayers' federal income tax returns for the years 1969 and 1970 and never had possession or control over any of the work papers relating thereto, except to deliver them to DR. EDWARD J. MASON at the direction of DR. EDWARD J. MASON and at the direction of his employer SAMUEL H. TANNEBAUM. The records for the year 1971 did not belong to the Respondent JERRY A. CANDY by virtue of the fact that he was merely an employee of Tannebaum, Bindler & Lewis.

(i) Since the time of the delivery by the Respondent JERRY A. CANDY to the taxpayer, DR. EDWARD J. MASON, the said files and the other said books, records and documents have been in the possession of the taxpayer, DR. EDWARD J. MASON, or his attorney, the Respondent, CYRIL DAVID KASMIR.

(j) On Thursday, January 4, 1973, the taxpayer, DR. EDWARD J. MASON, delivered the above-described files and papers and various other books, documents, bank statements, cancelled checks and records to the Respondent CYRIL DAVID KASMIR and since that time they have been and now are in the possession of the Respondent CYRIL DAVID KASMIR.

(k) The Respondent CYRIL DAVID KASMIR is counsel

for the taxpayers. Therefore, once again, he respectfully declines to give testimony based on the attorney-client privilege.

(l) Further, the Respondent CYRIL DAVID KASMIR has been directed by his clients, the taxpayers, to assert their rights and privileges under the Fifth Amendment to the Constitution of the United States. Therefore, once again, he respectfully declines to produce the above-described documents for the reason that evidence contained in such documents may tend to incriminate the taxpayers and might be used as evidence against them in criminal proceedings for the possible violation of the Internal Revenue laws of the United States in violation of the taxpayers' rights under the Fifth Amendment to the Constitution of the United States.

(m) Further, the Respondent, CYRIL DAVID KASMIR has been directed by his clients, the taxpayers, to assert their rights and privileges under the Fourth Amendment to the Constitution of the United States. Therefore, once again, he respectfully declines to produce the above-described documents for the reason that the government's attempt to obtain production amounts to an unreasonable search and seizure is in violation of the taxpayers' rights under the Fourth Amendment to the Constitution of the United States.

(n) The Respondent JERRY A. CANDY respectfully declines to give testimony as to information and facts, if any, acquired by him prior to January 3, 1973, based on the accountant-client privilege.

(o) The Respondent JERRY A. CANDY was employed on January 3, 1973, by the Respondent CYRIL DAVID KASMIR, counsel for the taxpayers, to assist him in analyzing the books, records, papers and documents of the taxpayers and the business, financial and personal affairs of the taxpayers insofar as he may deem such assistance to be necessary in the preparation and presentation of the taxpayers' case. Therefore, he respectfully declines to give testimony as to information and facts, if any, acquired by him subsequent to his employment based on the attorney-client privilege.

(p) The Respondents further state that if the Summons served on them are enforced, a violation of the accountant-client privilege, of the attorney-client privilege and of the

taxpayers' Constitutional rights and privileges granted them under the Fourth Amendment and under the Fifth Amendment to the Constitution of the United Sates would result, and that the said Summons are therefore unconstitutional and void in that they violate the aforesaid rights and privileges of the taxpayers.

WHEREFORE, RESPONDENTS PRAY:

(1) That the Summons served upon each of them on January 5, 1973, filed as Exhibit "B" and Exhibit "C" to the Petition to Enforce Internal Revenue Summons filed herein, be quashed and vacated and held for naught;

(2) That the Petition to Enforce Internal Revenue Service Summons be dismissed;

(3) That the Order to Show Cause issued by this Court on March 21, 1973, be vacated and discharged and that the Respondents be exonerated therefrom; and

(4) For such other and further relief as may appear to be proper in the circumstances.

AKIN, GUMP, STRAUSS, HAUER & FELD
2800 Republic National Bank Building
Dallas, Texas 75201
741-2111

By s/ Edward A. Copley
EDWARD A. COPLEY
ATTORNEY FOR THE RESPONDENTS

FISCHMAN, ROSENBERG, KASMIR
& WILLINGHAM
601 Kirby Building
Dallas, Texas 75201
744-5511

By s/ Cyril David Kasmir
CYRIL DAVID KASMIR
PRO SE

THE STATE OF TEXAS
COUNTY OF DALLAS

CYRIL DAVID KASMIR, the Respondent herein, after being first duly sworn, deposes and states that he had read the foregoing Response to Order to Show Cause and Motion to Quash Summons and that he knows the contents contained in Paragraphs 9(c), 9(d), 9(e), 9(f), 9(i), 9(j),

9(k), 9(l), 9(m) and 9(p) and that he knows that the facts stated in Paragraphs 9(c), 9(d), 9(e), 9(f), 9(i), 9(j), 9(k), 9(l), 9(m) and 9(p) are true.

s/ Cyril David Kasmir
CYRIL DAVID KASMIR
RESPONDENT

SUBSCRIBED AND SWORN TO BEFORE ME, A Notary Public in and for Dallas County, Texas, by the said CYRIL DAVID KASMIR on this the 27th day of March, 1973, to certify which witness my hand and seal of office.

s/ Cyril David Kasmir
NOTARY PUBLIC IN AND FOR
DALLAS COUNTY, TEXAS

My Commission Expires:
June 1, 1973.

(SEAL)

THE STATE OF TEXAS
COUNTY OF DALLAS

JERRY A. CANDY, the Respondent herein, after being first duly sworn, deposes and states that he has read the foregoing Response to Order to Show Cause and Motion to Quash Summons and that he known the contents contained in Paragraphs 9(a), 9(b), 9(f), 9(g), 9(h), 9(n), 9(o) and 9(p) and that he knows that the facts stated in Paragraphs 9(a), 9(b), 9(f), 9(g), 9(h), 9(n), 9(o) and 9(p) are true.

s/ Jerry A. Candy
JERRY A. CANDY
RESPONDENT

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for Dallas County, Texas, by the said

JERRY A. CANDY on this the 27 day of March, 1973, to certify which witness my hand and seal of office.

s/ Doris K. Cupples
NOTARY PUBLIC IN AND FOR
DALLAS COUNTY, TEXAS

My Commission Expires:
June 1, 1973.

(SEAL)

At the time I was served with the Summons by Special Agent James S. Mabrey of the Internal Revenue Service I did not possess any of the following records of Tannebaum, Bindler & Lewis:

(1) Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970 and 1971.
(2) Retained copies of E. J. Mason's income tax returns for 1969, 1970 and 1971.
(3) Retained copies of reports and other correspondence between Tannebaum, Bindler & Lewis and Dr. E. J. Mason during 1969, 1970 and 1971.

Prior to the time that I was served with the Summons and in response to the request of Dr. Edward J. Mason, I delivered all of the above-described documents to Dr. Edward J. Mason.

I am presently in the employ of the lawfirm of Fischman, Rosenberg & Kasmir to assist them in analyzing the books, records, papers and documents of Dr. Edward J. and Rae A. Mason and the business, financial and personal affairs of the said Masons insofar as the said Attorneys may deem such assistance to be necessary in the preparation and presentation of the Mason's case. In this capacity, I respectfully refuse to answer any questions at this time based on the attorney-client privilege.

Jerry A. Candy, C.P.A.

Dated: January 15, 1973

EXHIBIT A

On January 3, 1973, I was employed by Dr. Edward J. and Rae A. Mason to represent them with respect to their income tax liability for the years 1969, 1970 and 1971, in connection with the audit of their income tax returns and examination presently being made by the Internal Revenue Service.

By virtue of said employment, I respectfully refuse to answer any questions at this time based upon the attorney-client privilege.

Furthermore, on behalf of my clients, I respectfully refuse to produce any documents, books, records or papers at this time based upon the Fourth Amendment's protection against unreasonable searches and seizures and upon the Fifth Amendment's privilege against self-incrimination.

Cyril David Kasmir
Attorney at Law

Dated: January 15, 1973

EXHIBIT B

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT entered into at Dallas, Texas this 3rd day of January, 1973, by and between CYRIL DAVID KASMIR (hereinafter referred to as "the Attorney") and JERRY A. CANDY (hereinafter referred to as "the Accountant").

WITNESSETH:

WHEREAS, the Attorney has been employed by DR. EDWARD J. and RAE A. MASON (hereinafter referred to as the "Clients") to represent them in the matter of their federal income tax liabilities for the years 1969, 1970 and 1971, in connection with an audit of their income tax returns presently being made by the Internal Revenue Service, and

WHEREAS, in carrying out his duties and responsibilities pursuant to such employment the Attorney will require accounting assistance in analyzing the books, records, papers and documents which have been delivered to him by the Clients and to have accounting assistance in preparing schedules, workpapers and other documents which when prepared will represent the product of the Attorney's work in preparing and presenting the case of the Clients.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and undertakings hereinafter set forth, the Attorney and Accountant do hereby agree as follows:

1. The Attorney employs the Accountant to assist the Attorney in analyzing the books, records, papers and documents of the Clients and the business, financial and personal affairs of the Clients insofar as the Attorney may deem such assistance to be necessary in the preparation and presentation of the Client's case.

2. The Attorney agrees to pay the Accountant a reasonable fee for all such services actually rendered and performed by the Accountant pursuant to the Attorney's request.

3. (a) All books of account, records, papers and other documents belonging to the Clients and all memoranda, workpapers or other documents prepared by the Attorney which pertain to the affairs of the Clients which may be delivered by the Attorney to the Accountant in the course of the Accountant's employment shall be and remain the property of the Clients or the Attorney, as the case may be, and the Accountant shall be the gratuitous bailee thereof.

(b) All notes, workpapers, schedules, analyses and other documents prepared by the Accountant for use by the Attorney in the presentation of the Clients' case shall become the property of the Attorney immediately upon their preparation by the Accountant, whether or not such documents are complete or incomplete and irrespective of who purchased or paid for the component parts thereof, in the same manner and to the sane extent as though such documents had been prepared by the Attorney and the component parts thereof purchased and paid for by the Attorney, and the Accountant shall be the gratuitous bailee thereof.

(c) Under no circumstances shall the accountant permit anyone other than the Attorney to examine, inspect or copy or take possession of any of the records and documents referred to in paragraphs 3(a) and 3(b) hereof.

4. The bailment to the Accountant of all records and documents referred to in paragraph 3 above shall be automatically revoked and the Accountant shall at once deliver to the Attorney all such records and documents upon the happening of any one of the following events:

(a) A request by the Attorney for the return of such records and documents;

(b) The exhibition to or surrender of any of such records and documents by the Accountant to anyone other than the Attorney;

(c) A request by anyone other than the Attorney (including, but without being limited to, a creditor of the Clients and a representative of any agency of the United States Government) to examine, inspect or copy any of such records and documents, or for the possession of any of such records and documents;

(d) Any attempt to serve, or the actual service of, any court order, subpoena or summons, or any administrative subpoena or summons upon the Accountant which requires or purports to require him to produce any of such records and documents.

5. Should any litigation result from the failure or refusal of the Accountant to comply with the requests, orders, subpoenas or summons referred to in paragraphs 4(c) and 4(d) hereof, the Attorney agrees, if requested by the Accountant, to defend the Accountant in such litigation at the Attorney's cost and expense.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto the day and year first above written.

CYRIL DAVID KASMIR
ATTORNEY

JERRY A. CANDY
ACCOUNTANT

January 3, 1973

Tannebaum, Bindler & Lewis
1422 Metropolitan Savings Building
Dallas, Texas 75202

Gentlemen:

Please accept this as receipt for the following files of Dr. E. J. Mason: 1969, 1970 and 1971 Tax Files, Quarterly Tax Files, and Bookkeeping Files. 1970 and 1971 Financial Statements Files and 1969 Cash Disbursements.

Dr. E. J. MASON

EXHIBIT D

(Number and title omitted) (Filed: March 28, 1973)

The Respondent, CYRIL DAVID KASMIR and JERRY A. CANDY, are attempting to prevent judicial enforcement of two Summons issued by the Internal Revenue Service that were directed to them.

1. Petitioner JAMES S. MABREY, a Special Agent of the Intelligence Division of the Internal Revenue Service, is conducting a criminal investigation of the taxpayers. He has advised the taxpayer of his Constitutional rights. Mabrey is investigating whether taxpayer "reported all of his income". The failure to report income is a felony. See Section 7201 of the Internal Revenue Code of 1954.

2. The taxpayers have the right to withhold papers in their possession in a criminal investigation by virtue of the Fifth Amendment. See *Stuart v. United States,* 416 F.2d 459 (C.A. 5, 1969); *United States v. Cohen,* 338 F.2d 464 (C.A. 9, 1967); *United States v. Judson,* 322 F.2d 460 (C.A. 9, 1963), *Couch v. United States* (Decision: January 9, 1973).

3. Taxpayer exercised his constitutional right to consult an attorney and to seek his counsel and advice. He obtained and followed the attorney's advice. The attorney-client relationship, a confidential relationship, provided taxpayer a legitimate expectation of protected privacy and confidentiality. Taxpayer does not lose his constitutional rights and privileges because he retains counsel and delivers privileged papers to him.

See *United States v. Judson,* 322 F.2d 460 (C.A. 9, 1963); *Couch v. United States* (Decision: January 9, 1973).

4. All the activity complained of by the Government took place *before* the Summons were served. The rights and obligations of the parties did not become fixed until the Summons were served. See *Couch v. United States* (Decision: January 9, 1973). The case of *United States v. Zakutansky,* 401 F.2d 68 (C.A. 7, 1968), cited by the Government, involves the transfer of papers by an accountant after he had been served with Summons. *Zakutansky* is cited by the Supreme Court in *Couch* for the rule stated above. The case of *United States v. Baldridge,* 281 F. Supp. 470 (SD Tex., 1968), cited by the Government, holds that the rights and obligations of the parties became fixed at "the institution of an income tax evasion" and not, as the Supreme Court ruled in *Couch,* at the time the Summons was served.

5. Possession, not ownership, bears the closest relationship to the personal compulsion forbidden by the Fifth Amendment. To tie the privilege against self-incrimination to a concept of ownership would be to draw meaningless line. See *Couch v. United States* (Decision: January 9, 1973). In the cases of *Deck v. United States,* 339 F.2d 739 (C.A.D.C., 1964), cert. den. 379 U.S. 967 (1965) and *United States v. White,* 326 F. Supp. 459 (S.D. Tex., 1971) cited by the Government, the Court found a lack of ownership and, therefore, denied the privilege. *Couch* specifically rejects the requirement of ownership as a basis for the privilege.

6. The attorney for the taxpayers, the Respondent CYRIL DAVID KASMIR, in possession of the papers, can assert the attorney-client privilege and his client's constitutional rights under the Fourth and Fifth Amendments. See *United States v. Judson,* 322 F.2d 460 (C.A. 9, 1963); *Colton v. United States,* 306 F.2d 633 (C.A. 2, 1962); *Brody v. United States,* 243 F.2d 378 (C.A. 1, 1957); *Application of House,* 144 F. Supp. 95 (N.D. California, 1956); *United States v. Foster, Lewis, Langley & Onion,* 65-1 U.S.T.C. Par. 9418 (W.D. Tex., 1964).

It is respectfully submitted that this Court should deny the enforcement of the Summons sought by the Government and that it should grant the relief prayed for by the Respondents in their Response to Order to Show Cause and Motion to Quash Summons.

AKIN GUMP, STRAUSS, HAUER & FELD
2800 Republic National Bank
Building
Dallas, Texas 75201
741-2111

By s/ Edward A. Copley
EDWARD A. COPLEY

ATTORNEY FOR THE RESPONDENTS

FISCHMAN, ROSENBERG, KASMIR &
WILLINGHAM
601 Kirby Building
Dallas, Texas 75201
744-5511

By s/ Cyril David Kasmir
CYRIL DAVID KASMIR
PRO SE

TRIAL MEMORANDUM OF LAW OF THE UNITED STATES

(Number and title omitted) (Filed: March 27, 1973)

In this action the United States is attempting to secure judicial enforcement of two of its Internal Revenue summonses directed, respectively, to each of the respondents.

FACTS

1. The taxpayers under investigation by the Intelligence Division, IRS, are Edward J. and Rae A. Mason; the years under investigation are 1969 through 1971.

2. Mason was first contacted by Intelligence on January 3, 1973, at which time Special Agent Mabrey identified himself and gave the taxpayer his constitutional rights. At that time Mabrey requested permission to inspect Mason's records.

Mason voluntarily telephoned Candy, his accountant and one of the respondents herein, to tell him that his permission had been granted to the agent; at the conclusion of that telephone call Mason indicated to Mabrey that Candy had advised him to terminate the interview and *not* to furnish any records.

Shortly thereafter Mason received a telephone call purportedly from his attorney, Kasmir, the other respondent in this case. At the conclusion of that call Mason told Mabrey that he would not answer any more questions or furnish any records to him.

3. One day later Mabrey contacted Candy in an attempt to gain permission to examine the latter's work papers and to talk to him about the tax returns under investigation; Candy replied that the records were now in the possession of Kasmir (having been moved over after the telephone conversations described in paragraph 2).

4. Still one day later, on January 5th, the summonses at issue were served on both Candy and Kasmir.

5. On January 15th, in response to the summonses directed to them, Candy and Kasmir appeared but refused to testify and refused to turn over any records. Candy refused to answer any questions because, he stated, he was now employed by Kasmir; he invoked the attorney-client privilege.

Kasmir declined to produce the records and answer any questions on the grounds of the attorney-client privilege as well as the Fourth and Fifth Amendment privileges.

6. Mabrey requires the summoned records, i.e., accountant's work papers, retained copies of Mason's income tax returns and retained copies of reports and other correspondence, all for the years 1969 through 1971, in order to determine if Mason has reported all of his income. Since Mason himself has declined to produce his own records or to give any testimony the sought materials are vital to the instant investigation.

QUESTION PRESENTED

Is the Fourth or Fifth Amendment a bar to enforcement of the subject summonses?[1]

LEGAL DISCUSSION

I

There exists no Constitutional privileges barring production of the summoned documents

The United States Supreme Court recently decided the case of *Couch v. United States* (Decision: Jan. 9, 1973), attached hereto, which disposes of the raised "defense." In *Couch* the Highest Court held that a taxpayer could not prevent the enforcement of a summons for the production of her income tax records (i.e., they belonged to her personally) held by her accountant by raising the Fourth or Fifth Amendments. It noted as follows:

> It is important to reiterate that the Fifth Amendment privilege is a *personal* privilege: It adheres basically to the person, not to information which may incriminate him. As Mr. Justice Holmes put it: "A party is privileged from producing the evidence but not from its production." *Johnson v. United States,* 228 U.S. 457, 458 (1913). (Emphasis by the Court.)

---

[1] The attorney-client privilege is not discussed:

> [I]f an unprivileged document exists before there exists an attorney-client relationship the mere delivery of the document to an attorney does not create a privilege * * *.

Bouschor v. United States, 316 F.2d 451, 457 (C.A. 8, 1963) a summons enforcement case which disallowed the appellant-attorney's claim of privilege. In Texas see the recent case of *United States v. White,* 326 F.Supp. 459 (SD Tex., 1971).

> In the case before us the ingredient of personal compulsion against an accused is lacking. The summons and the order of the District Court enforcing it are directed against the accountant. He, not the taxpayer, is the only one compelled to do anything. And the accountant makes no claim that he may tend to be incriminated by the production.

The Supreme Court in *Couch,* noting that "no confidential accountant-client privilege exists under Federal law, and no State-created privilege has been recognized in Federal cases", goes on to state "that no Fourth [2] or Fifth Amendment claim can prevail where, as in this case, there exists no *legitimate* expectation of privacy and no governmental compulsion against the person of the accused." (Emphasis added)

II

The Courts do not condone the type of behavior which occurred in the instant tax investigation

Here records were held by Candy, the accountant, until he was informed of the instant tax investigation, he then advised the taxpayer, Mason, to refuse to cooperate, one day later the accountant's records found their way to Kasmir, the taxpayer's attorney.

> It would be clearly erroneous to attribute to these sham transactions the affect of transferring possession since to do so would violate the rule that the power of the Commissioner to investigate the records and affairs of taxpayers must be liberally construed. (Citations omitted.)

Judge Ingraham in the summons enforcement case of *United States v. Baldridge,* 281 F. Supp. 470, 473 (SD Tex., 1968) where the Court further notes, at pp. 472-473, that it does not sanction the "frantic eleventh hour effort on the part of the taxpayer to put these records and work papers beyond the reach of the Government." Similarly see *United State v. Zakutansky,* 401 F. 2d 68 (C.A. 6, 1968);

[2] See United States v. Giordano, 419 F.2d 564, 568-569 (C.A. 8, 1969), a summons enforcement case which states that "the Government has the statutory right to this information", for an analysis of the Fourth Amendment "defense".

Bouschor v. United States, 316 F. 2d 451 (C.A. 8, 1963) and *Deck v. United States,* 339 F. 2d 739 (C.A. DC, 1964), cert. den. 379 U.S. 967 (1965). It is obvious that the respondents and taxpayer herein were playing the "shell game" in an attempt to thwart the instant investigation. For that reason alone, notwithstanding the clear holding in *Couch,* this Court should grant immediate relief to the United States.

Conclusion

It is respectfully submitted that this Court should grant immediate enforcement of the summonses at issue.

Frank D. McCown
United States Attorney

s/ Kenneth J. Mighell
Kenneth J. Mighell

Assistant United States Attorney

By: s/ Jeffrey D. Snow
Jeffrey D. Snow
Trial Attorney, Tax Division
Department of Justice
Washington, D.C. 20530
Of Counsel

HEARING ON PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS

(Number and title omitted) (Filed: April 23, 1973)

BE IT REMEMBERED that on the 28th day of March, A.D. 1973, at 9:15 A.M., the following proceedings were had in the above cause before Honorable ROBERT M. HILL, United States District Judge, at Dallas, Texas:

—

APPEARANCES:

Hon. KENNETH J. MIGHELL,
Assistant U. S. Attorney,
Dallas, Texas,

and

(1-A) Hon. JEFFREY SNOW, Tax Division
U. S. Department of Justice,
Washington, D.C.

For the PETITIONERS

Hon. EDWIN A. COPLEY

and

Hon. CYRIL D. KASMIR, Dallas, Texas,

For the RESPONDENTS.

• • • •

9:15 A.M.

(5)

THE COURT:

We have CA 3-6973-D, United States of America and James S. Mabry, Special Agent of the Internal Revenue Service, Petitioners, versus C. D. Kasmir and Jerry A. Candy, Respondents. Is the Government ready?

MR. MIGHELL:

You Honor, the Government is ready, and I would like to present Mr. Jeffrey Snow, an attorney from the Tax Division of the Department of Justice, who is going to appear on behalf of the government in this case.

THE COURT:

All right. What says the Respondents?

MR. COPLEY:

Your Honor, the Defendants or Respondents are ready. I represent the Defendants, Mr. Kasmir and Mr. Candy, together with Mr. Kasmir, who is also present.

THE COURT:

Is there going to be any testimony in connection with the case?

MR. MIGHELL:

Your Honor, the Government will put on witnesses, yes.

THE COURT:

All right. Bring them forward. Do the Respondents have any witnesses?

MR. COPLEY:

Your Honor, we will probably put on the stand Mr. Kasmir and Mr. Candy.

(6) THE COURT:

All right. Let's swear them at this time. All of the witnesses rise, please, and raise your right hands.

(Witnesses sworn.)

THE COURT:

Who will you have first?

MR. SNOW:

You Honor, the United States will call Agent Mabry.

THE COURT:

Come up, Mr. Mabry.

Before we get into the testimony, why don't you just briefly tell me what kind of relief you seek.

MR. SNOW:

Your Honor, this litigation resulted from failure to comply with two Internal Revenue summonses, and these summonses cover, roughly, Attorney Kasmir and Accountant Candy's failure, on January 5 of this year—a summons requiring records which had been in the possession and under the ownership of Tannebaum accounting firm here in Dallas, and the records on the 15th of January, which was the response date for the summonses were not turned over to the Internal Revenue, and Internal Revenue required these records to go forward, in effect to really start a tax investigation of the taxpayer, Dr. Edwin J. Mason.

So, Your Honor, we briefly state that we are here trying to get the Court order compelling production of the accont- to get the Court order compelling production of the accountant's records for the Government.

(7) THE COURT:

All right. What is your position of it?

MR. COPLEY:

Your Honor, our position is, fairly simply stated, that at the time the summonses were served on Mr. Kasmir and on Mr. Candy, Mr. Candy, the accountant, did not have possession of any records relating to the taxpayer.

In fact, Mr. Candy did not work for the accounting firm that prepared the returns for Dr. Mason in the years 1969 and 1970; he did start to work for the accounting firm in December of 1971; and

The only records which has has worked on have been those for the year 1971.

Now, in any event, at the time he was served with the summons, he had no records. They had been delivered back to Dr. Mason, at Dr. Mason's request, and at the request of Mr. Candy's employers, Mr. Tannebaum et al.

At the time of the service of the summons on Mr. Kasmir, Mr. Kasmir had been employed by Dr. Mason as his attorney, Your Honor, to protect these records, and Mr. Kasmir at the time did have possession of the records sought by the Government.

But we feel that, on the ground of attorney-client privilege, and on the ground that Mr. Kasmir had been retained expressly to protect these records, that on (8) behalf of the taxpayer he asserted the Fourth and Fifth Amendments.

THE COURT:

You say that Candy had no records whatsoever?

MR. COPLEY:

At the time he was summonsed, yes.

THE COURT:

All right.

MR. COPLEY:

Thank you.

THE COURT:

Thank you.

MR. SNOW:

May I respond shortly?

THE COURT:

Briefly. Yes.

MR. SNOW:

He had no records because the order was issued one day

prior to the date of the summons and the accounting firm had turned over the records which found their way to Kasmir.

The attorney-client privilege; we are asking for no testimony from Kasmir or asking for any confidential communications that he had with the taxpayer;

We are asking for records which were complete and finished before any attorney-client relationship.

Finally, Your Honor, this occurrence only occurred after all of the parties involved knew that the special agent was making a tax investigation, and the proof will connect this up.

THE COURT:

All right.

MR. SNOW:

For the record.

(9) THE COURT:

All right, go ahead.

JAMES S. MABRY, a witness called by the Petitioners, having first been duly cautioned and sworn, testified on his oath as follows, to wit:

DIRECT EXAMINATION

BY MR. SNOW:

Q. For the record, Agent Mabry, please state your name to the Court, please.

A. James S. Mabry.

Q. And your address?

A. 1127 North Clinton, Dallas, Texas.

Q. And for whom are you employed?

A. Internal Revenue Service.

Q. What division of the Internal Revenue Service?

A. Intelligence Division.

Q. I see. What is your job title?

A. I am a Special Agent.

Q. And special agents are basically concerned with investigating alleged criminal violations of the Internal Revenue Code?

A. My job is to ascertain if a violation has occurred (10) of the Internal Revenue Code.

Q. Now, sir, in the course of your official duties, do you carry a badge?

A. Yes, I do.

Q. Sir, how long have you been employed as a special agent by the Internal Revenue?

A. About a year and a half.

Q. As a special agent, are you authorized in your investigations to issue internal revenue summonses?

A. Yes.

Q. I see. Sir, directing your attention to January 3rd of 1973, in what district of the Internal Revenue Service were you assigned?

A. Dallas District.

Q. Now, sir, again, with reference to that date, January 3rd, what particular type of investigation, if any, were you working on?

A. Edward J. and Raye A. Mason.

Q. Now, sir, you mentioned the taxpayer, Edward J. Mason; can you indicate to the Court on what date you made initial contact with Mason?

A. On January 3rd.

Q. Of 1973?

A. Yes, sir.

Q. To your knowledge, had anybody from Internal (11) Revenue, with reference to this investigation, contacted Mason before that date?

A. No.

Q. Now, sir, you indicated that you made initial contact with Mason on January 3rd.

A. That's right.

Q. At about what time did you do this, and how did you do it?

A. Special Agent Herb Linder and I visited Mason's office at two o'clock on January 3rd of this year.

Q. Now, was Mason present when you visited that office?

A. Yes, he was.

Q. Will you indicate, was there anything you did to identify yourself?

A. I introduced myself as a special agent for the Internal Revenue Service, and both Herb Linder and I produced our credentials for him to examine.

Q. I see. Did you explain to Mason why you were making this call?

A. Yes.

Q. And what did you tell him?

A. I told him that his tax returns for the years '69, '70

and '71 were under investigation, and that I wanted to visit with him about the tax returns.

(12) Q. Now, prior to any further discussion, did you have occasion to give Mason any constitutional warnings?

A. Yes, I did. I advised him of his constitutional rights, as prescribed by our Manual, 93.84.

Q. Now, after giving him his rights, what, if anything, happened?

A. We talked for approximately two hours about his personal background and about his financial dealings and how his records are kept.

Q. Now, during the course of your two-hour conversation, did you have occasion to make any requests of Mason?

A. Yes. I requested that I be allowed to examine his personal books and records.

Q. And what was his response to this request?

A. He produced his books and records and put them on his desk and gave his permission for me to examine them.

Q. And did you look through his records to any extent?

A. Only casually, to see if they were complete, and any question as to their completeness. I thought at the time there were some missing. He said that if there were any missing, they would be at the accountant's office.

Q. I see, and what, if anything, did you ask him at that point?

A. I didn't ask him, but he went to the telephone and made a call.

(13) Q. I see. Were you in the room when he made this call?

A. Yes.

Q. Now, will you describe what you heard in this call?

A. I heard him respond, or heard him say that he had been advised of his rights, and that I was a special agent.

Q. I see.

A. And then later he told me that he had been advised not to produce any records and not to answer any more questions.

Q. I see. This was after the conclusion of the phone call?

A. Yes, sir.

Q. And did he furnish any more records?

A. The records were still up on the forward portion of his desk, but he denied me permission to take them.

Q. You indicated that at about what time this call from Mason was made on that date, January 3rd?

A. I can't recall exactly, but it was near 4:00 o'clock.

Q. I see, and did he indicate to you on that date to whom that call was directed?

A. Yes. He told me that he had called his accountant.

Q. I see. What firm is that?

A. He said it was—he said later it was Tannebaum, (14) and Mr. Candy with Tannebaum, Bindler and Lewis.

Q. Now, sir, after that initial call, which you indicated was somewhere around four o'clock, did you have occasion to continue your conversation with the taxpayer?

A. Yes. He was groping with the decision as to whether to furnish the records to me or not—

MR. COPLEY:

Your Honor, we object to the response as conclusionary.

THE COURT:

I sustain it.

A. He told me that he was undecided as to whether to furnish them or not.

Q. I see.

A. And then he—

Q. Well, let me—

A. Oh. Go ahead.

Q. Now, as you went along, were there any further phone calls made by Mr. Mason?

A. Yes, he made—no, there was no other call he made.

Q. Were there any calls he received, received by Mason?

A. Yes, he received a call.

Q. Okay; describe that.

A. He later told me that it was his attorney, who had also advised him not to produce any records nor to (15) answer any more questions.

Q. Now, between the first call which he made and the second one which he received, were you in his presence?

A. Yes.

Q. Did he make any calls between that time?

A. No.

Q. Did he identify to you on that date the name of his attorney?

A. Yes, he did.

Q. What was that man's name?

A. Mr. C. D. Kasmir.

Q. Did Mason subsequently on that date withdraw the records he had placed before you?

A. Yes, sir, he did.

Q. And I presume that concluded your visit on the 3rd?

A. Yes. We left.

Q. And about what time was your visit concluded?

A. Four o'clock.

Q. Well, let's move ahead, sir, one day ahead on January 4th, and I will ask you what steps, if any, you took on that date to secure these records for the investigation.

A. I telephoned Mr. Candy and arranged a convenient time that he and I could meet.

Q. You were now looking for the accountant's records, is that right?

(16) A. Yes.

Q. What, if anything, did Candy indicate to you?

A. He told me that he did not have possession of the records, that Mr. Kasmir had possession, and that he would be happy to meet with me in Mr. Kasmir's office.

Q. Did you have any further contact with Candy or Kasmir on that date?

A. No, I didn't.

(Mr. Snow hands instrument to opposing counsel.)

MR. SNOW:

Your Honor, I would like to at this time submit into evidence by agreement with counsel five exhibits:

(Government's) Exhibit Number 1 is the summons directed to Mr. Candy.

(Government's) Exhibit Number 2 is the summons directed to Mr. Kasmir;

(Government's) Exhibit 3 will be a statement dated January 15th from Candy;

(Government's) Exhibit Number 4, Your Honor, will be a statement dated January 15th from Kasmir;

(Government's) Exhibit Number 5 is a power of attorney apparently signed by Kasmir, Tannebaum and Candy.

MR. COPLEY:

Is it not signed by Dr. Mason?

(17) MR. SNOW:

(Counsel looks.) And it appears also on the front, Your Honor, to be signed by Mason and his wife.

Now, may these five exhibits be admitted into evidence, Your Honor?

THE COURT:

Any objection?

MR. COPLEY:

No objection.

THE COURT:

They are admitted.

(Mr. Snow places exhibits before witness.)

BY MR. SNOW:

Q. Agent Mabry, directing you attention to January 5, did you have occasion on that date to issue two summonses?

A. Yes, sir.

Q. To whom was the first summons delivered on that date?

A. To Mr. C. D. Kasmir.

Q. The attorney?

A. Yes.

Q. And at the time you delivered that summons to Kasmir, what, if anything, did you say to him, and what did he say to you?

A. I introduced myself and asked him if he was in possession of records which belonged to Tannebaum, Bindler and Lewis, and he replied, yes, that he was, and I handed (18) him the summons.

Q. And subsequent to that or shortly after you handed him the summons, you handed a summons to Mr. Candy in his office?

A. Yes, sir.

Q. Now, sir, with regard to the records requested by the summons; they appear to be identical, is that right?

A. Yes.

Q. All right. I see. Now, what was the return date on those summonses?

A. January 15.

Q. And on that date Candy and Kasmir appear, as directed by the summonses?

A. Yes, they appeared.

Q. Did they bring any records, as directed by the summonses, with them?

A. Mr. Kasmir told me that they did not.

Q. All right. I see. Now, on that date, the 15th, and directing your attention to Exhibits 3, 4 and 5, did they hand you any documents?

A. (Witness looks.) Yes. Each handed me a prepared statement, and these are the statements, (Government's) Exhibits 3 and 4, and Mr. Kasmir also handed me a power of attorney.

Q. All right.

(19) A. (Government's) Exhibit Number 5.

Q. Did Mr. Kasmir indicate anything else to you on the 15th?

A. He stated in the preliminary form that the reason that he was referring to answer the questions.

A. These are explained, apparently, in (Government's) Exhibits 3 and 4?

A. Yes.

Q. All right.

A. He also said that he wanted a hearing in District Court on these issues.

Q. All right. Sir, have you obtained any of these records through any other sources since January 15th?

A. No.

Q. And what is the state of your investigation without these records?

A. Well, the records are crucial to the investigation, that we have been denied access to Dr. Mason's personal records. In order to ascertain the correct tax liability and if a violation of the Internal Revenue Code has taken place, we need them, and to fill in the links in the preparation of the tax return from the taxpayer to the time it was submitted, I need those records that were prepared by the accountant.

Q. I see. In other words, the mere fact that (20) Internal

Revenue has the tax returns for the years in question does not necessarily reflect the correctness?

A. No, it does not.

Q. And you want to go back and find out how the return was—

A. (Interposing) Yes, I want to trace from the tax returns to the source of the information that went into the tax returns; I have to see that as to completeness and accuracy.

Q. Now, sir, I note in the summons you were asking for the retained copies held by the accountants of the three tax returns, and you have indicated to me, I believe, that we already have copies of the tax returns.

Now, why are those retained copies necessary, why are they required?

A. To see if the tax return filed is the same as the one the accountant prepared.

Q. Now, sir, should you obtain that information under the direction of the Court, might there be any possible criminal or civil tax consequences?

A. There could be civil consequences, either additional taxes due or a refund to Mason.

Q. All right.

A. And there could be a criminal prosecution.

Q. Particularly on the criminal prosecution, have you (21) gotten to the point of recommending any such prosecution?

A. No.

Q. Could you, at this point, without these records?

A. No. The investigation has just begun.

Q. Now, sir, is there any other agent of Internal Revenue assigned with you on this particular investigation?

A. Yes. There is a Revenue Agent, Dennis Healey.

Q. And what division does he work in?

A. Field Audit Division.

Q. And should you get these records, what will his task be?

A. He would be assigned to ascertain the civil liability.

Q. He will work under your direction in that regard?

A. Yes.

MR. SNOW:

I have no further questions.

THE COURT:

Cross examination.

MR. COPLEY:

Thank you, Your Honor.

CROSS EXAMINATION

BY MR. COPLEY:

Q. Mr. Mabry, you specified that you gave a warning required by the Manual, 93-84; what is required by that Manual?

A. It requires that the prospective—the principal (22) under investigation be warned of his rights.

Q. And what does it say, what warning do you give, specifically?

A. I don't try to remember it. I have it written down and I read it to Dr. Mason.

Q. You read part of the Manual?

A. A transcript.

Q. To Dr. Mason?

A. A transcript of my handbook.

Q. You do not have a copy of that with you?

A. Yes, I have it with me.

Q. Would you read it to the Court?

A. (Witness looks.)

"As a special agent, one of my functions is to investigate the possibility of criminal violation of the Internal Revenue law. In connection with my investigation of your tax liability, I would like to ask you some questions. However, first I advise you that under the Fifth Amendment of the Constitution of the United States, I cannot compel you to answer any question or to submit any information, if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceedings which may be undertaken. I advise you further that you may, if you wish, seek the assistance (23) of an attorney before responding. Do you understand your rights?" And he responded that he did.

Q. Now, the records that he placed on his desk, what was the nature of those records?

A. I didn't actually examine the records. He told me that they were check stubs and—

Q. But you did not examine them at that time, the records?

A. That's right.

Q. Did you take possession—

A. That at the time—

Q. Did you take—

A. That is the affirmative.

Q. I am sorry.

A. That is the affirmative; I did not examine the records.

Q. Did you take possession of any of the records and take them with you before you left Dr. Mason's office?

A. No.

Q. Did you make any copies of any of those records?

A. No, I didn't.

Q. Did you make notes from any of those records?

A. No, I didn't.

Q. Did Mr. Mason—when you asked him the question, who was his accountant, what was his reply?

(24) A. He said that Mr. Candy, or said the firm name, Tannebaum, Bindler & Lewis.

Q. But he said Mr. Candy was his accountant?

A. Yes, he did.

Q. Did you, in this case, issue a summons to any other person other than Mr. Kasmir and Mr. Candy?

A. I named in my summons to Mr. Candy Tannebaum, Bindler & Lewis.

Q. What do you mean?

A. But no other summons was issued than the two here that are exhibits.

Q. Well, what do you mean, you named them in the summons, Tannebaum, Bindler and Lewis?

A. Well, in the "TO" section of the summons, it says "Jerry A. Candy, Tannebaum, Bindler & Lewis."

Q. Did you discuss this matter with anyone in that office other than Mr. Candy?

A. Mr. Tannebaum greeted me and asked if he could help.

Q. Did he know why you were there?

A. I didn't tell him why I was there.

Q. Did you discuss the case with him?

A. No.

Q. So, the only person, the only accountant that you discussed the case with is Mr. Candy?

(25) A. Yes.

Q. What did you tell Mr. Candy when you came to him on January 5th?

A. I told him that as part of my investigation of Dr. Mason's tax liability I wanted to look at his work papers.

Q. What did he say to you at that time?

A. He said he didn't have the work papers, and they were in the possession of Mr. Kasmir.

Q. Did he tell you when they were turned over to—he said they were in the possession of who?

A. Mr. Kasmir.

Q. Mr. Kasmir?

A. Yes.

Q. Did he say to whom he turned the records over?

A. Yes, he did.

Q. Who?

A. He said he had taken them to Dr. Mason's office and he received a receipt and he produced the receipt and I looked at it.

Q. Did you ask Mr. Candy if he prepared the 1969 return?

A. Yes, I did.

Q. What was his reply?

A. He said he didn't and he didn't know who did.

(26) Q. Did he indicate that he had prepared the 1970 return?

A. No.

Q. The income tax return for 1970?

A. His answer was the same for 1970.

Q. He said he did not?

A. Yes.

Q. What about 1971?

A. He said he did prepare the 1971 return.

Q. Did he say that he was an employee of Tannebaum, Bindler & Lewis?

A. I didn't ask him if he was.

Q. You didn't ask him if he was an employee?

A. No.

Q. Did you ask him who his employer was?

A. No.

Q. Did you discuss with—your recollection—Mr. Candy whether or not you would summons Mr. Tannebaum?

A. I don't understand.

Q. Did you tell Mr. Candy or imply to Mr. Candy that you would or might summons Mr. Tannebaum?

A. I didn't discuss anything like that with Mr. Candy.

Q. In your testimony when you said Dr. Mason later told you who his accountant was, what do you mean by "later".

(27) A. During the same interview, and for further contact he told me in detail who his accountant was.

Q. What do you mean, in detail?

A. Well, he told me the name; he told me the phone number; he told me where they were.

Q. And when you said "he later told you who his attorney was," what did you mean by "later"?

A. That was immediately following what he told me about the accountant, the same interview.

Q. The same interview?

A. Same interview.

Q. The only time that you talked to Dr. Mason was at that one visit on January 3, 1973?

A. That is true.

Q. Have you ever talked to Mrs. Mason?

A. No.

Q. Have you ever tried to get Mrs. Mason?

A. No. I have never tried to talk to her.

(Conference between counsel for Respondents.)

BY MR. COPLEY:

Q. Who directed you to visit Dr. Mason?

A. No one directed me to visit Dr. Mason.

Q. How did you come to visit him?

A. I made the decision to visit Dr. Mason. (28)

Q. How did you select Dr. Mason for the purpose of this visit?

A. The three tax returns and the investigation was assigned to me, and as part of that I visited the principal in the investigation.

Q. In other words, you are saying that, in the course of the work of the Intelligence Division, the three tax returns were assigned to you?

A. Yes; three tax returns and the investigation was assigned to me.

Q. Who assigned those to you?

A. My supervisor.

Q. Who is he?

A. Joseph T. Houston.

Q. Have you talked to anyone other than Dr. Mason, Mr. Kasmir, Mr. Candy, about this case?

A. Yes. I talked to Joseph Houston.

Q. Who is he?

A. He is my supervisor.

Q. Anyone else?

A. Special Agent Marcus Henry.

Q. Anyone else other than your counsel?

MR. SNOW:

Your Honor, we are going to object to this; this is immaterial.

THE COURT:

What is the relevancy?

(29) MR. COPLEY:

Well, Your Honor, he has alleged that it is crucial to have these records, and we are trying to understand why it is crucial and why the investigation is being conducted.

THE COURT:

Well, he says it is an investigation of a taxpayer. I will sustain the objection.

(Conference between counsel for Respondents.)

BY MR. COPLEY:

Q. Mr. Mabry, you stated that in meeting with Mr. Candy on the 5th he displayed to you a receipt from Dr. Mason?

A. That's right; that is what he said.

Q. Did he show you the receipt?

A. Yes, he did.

Q. Would you remember the receipt if you saw it?

A. I could not. No.

MR. COPLEY:

No further questions.

THE COURT:

Wait a minute. Just a minute.

(Conference between counsel for Respondents.)

MR. COPLEY:
That is all.
THE COURT:
Are you through?
MR. COPLEY:
Yes.
THE COURT:
Go ahead.
MR. SNOW:
No further questions.
(30) THE COURT:
Step down, Mr. Mabry.

(Witness excused.)

THE COURT:
Who will you have next?
MR. SNOW:
Your Honor, as an adverse party, we will call Mr. Candy.
THE COURT:
Come up.

JERRY A. CANDY,

one of the Respondents, called under the Adverse Witness Rule, having been first duly cautioned and sworn, testified on his oath as follows, to wit:

DIRECT EXAMINATION

BY MR. SNOW:
Q. For the record, Mr. Candy, please state your full name and resident address.
A. Jerry A. Candy. I live at 13219 Flagstone Lane, Dallas.
Q. Mr. Candy, what business are you in?
A. I am employed as an accountant by Tannebaum, Bindler & Lewis.
Q. And where did you receive your accounting degree?
(31) A. Southern Methodist University.
Q. And what year was that, sir, approximately?
A. 1967.
Q. And since then you have practiced as a CPA?
A. No. I received my certificate as a CPA subsequent to that time.
Q. You have practiced as an accountant since 1967?
A. Yes, and before.

Q. Now, it is true that during the course of your employment with Tannebaum, Bindler and Lewis—you are employed by them, is that right?
A. That is correct.
Q. When were you employed by them?
A. In December of 1971.
Q. And after that time you had caused, did you not, to have the Edward and Raye Mason account?
A. That account was directed to me sometime around February or March of 1972 for the purpose of preparation of the 1971 income tax return.
Q. You say the purpose was to—the purpose of that account was to prepare their federal income tax return, is that so?
A. The purpose of the direction at that time was, yes.
Q. And I assume that you, yourself, in doing this, (32) prepared certain work papers; isn't that so?
A. In the preparation of the tax return, yes.
Q. Now, pertaining to this account with the Tannebaum accounting firm, how long had the account been with the firm?
A. I cannot answer that question.
Q. Well, you have been told, haven't you?
A. No.
Q. Huh?
A. I am sure it has been for a number of years, but I don't know how many.
Q. Well, I received an answer yesterday afternoon from you and received a certificate from you and it says here, and you signed it, that for a number of years, for the years 1969, 1970, and 1971, the taxpayer had employed the firm of Tannebaum, Bindler & Lewis—now, do you stay with that?

THE COURT:
He says several years.
A. I said for several years.
THE COURT:
He did not deny that.

BY MR. SNOW:
Q. Now, sir, there has been some testimony as to a receipt, I think, here, and I have a copy which I disassociated from the answer—(counsel looks)—is that the receipt you are talking about (handing to witness)?

(33) A. (Witness looks.) That is correct.

MR. SNOW:
I will mark this. I would offer that, Your Honor, as Government's Exhibit Number 6.
THE COURT:
Any objection?
MR. COPLEY:
No objection.
THE COURT:
It is admitted.

(REPORTER'S NOTE: Photocopy of letter dated January 3, 1973, to Tannebaum, Bindler & Lewis, from Dr. E. J. Mason, was marked as:

GOVERNMENT'S EXHIBIT NO. 6.)

BY MR. SNOW:
Q. When did you receive that receipt?
A. I initially received it late in the afternoon on January 3rd, unsigned.
Q. Unsigned?
A. It was typed in our office.
Q. I see.
A. Yes, sir.
Q Pursuant to whose instruction was it typed?
A. It was typed by instruction of my employer.
Q. I see, and that was late in the afternoon?
A. That is correct.
(34) Q. Of the 3rd?
A. That is correct.
Q. Now, sir, on the 3rd had you received a phone call from Mason?
A. Yes, I had.
Q. And that was around four o'clock in the afternoon?
A. Well, as I recall, it was around 2:30, because I glanced at the clock.
Q. 2:30?
A. Yes.
Q. And after that call you called Kasmir, is that correct?
A. That is correct.
Q. I see, and after the initial call from Mason to you, you prepared that particular exhibit 6, is that so?
A. Well, I talked to my employer first.

Q. Then it was prepared, is that so?
A. Then it was prepared.
Q. And it is true, is it not, that you asked Mason, during the initial phone call which you indicated was about 2:30, "Is the man you are talking to a special agent?"
A. That is correct.
Q. And you advised Mason, did you not, that it was your opinion that he should refuse to show any of his, Mason's, records to the special agent?
(35) A. That is correct.
Q. Now, according to your answer, it was one day later on January 4th that the records—and I am talking about the records of Tannebaum—where delivered over, is that so?
A. That is true.
Q. And you delivered them, is that so?
A. I delivered them to Dr. Mason.
Q. Was that after the call from the special agent to you?
A. No; that was at approximately eight o'clock in the morning.
Q. I see, and you received the call a little later?
A. Sometime in the afternoon.
Q. When you delivered them to Mason, where did you deliver them, right to Mr. Kasmir's office?
A. No. I delivered them to Dr. Mason's office at the hospital on Forest Avenue.
Q. I see, and you were not with Mason when he presented them to his attorney?
A. No, I was.
Q. And I presume that we are talking about Exhibit 6, and it was executed on that date, the 4th, at the time you made the delivery?
A. That is correct.
(36) Q. Now, sir, you have been with the Tannebaum firm, I think you said—correct me if I am wrong, since 1969?
A. Since December, 1971.
Q. Excuse me, and you were with an accounting firm before that, I suppose?
A. That is true.
Q. I see. Now, have you ever had any agreement, prior to the 3rd, with Mason as to the ownership of control of your accountant's records?
A. I would have none, being an employee of the firm,

but if any were present, they would be done by the firm, and I have no knowledge of that.

MR. SNOW:

Now, Your Honor, I ask that that answer be stricken as not responsive.

BY MR. SNOW:

Q. I ask you if you had any, to your knowledge.

A. No, I did not.

Q. Now, the second question, do you know whether anyone in that law firm did?

A. No, I don't.

Q. Now, is it your practice, as an accountant, to turn over records to the taxpayer at this request, as happened here?

A. No.

Q. No. Is it your practice, as an accountant, to (37) turn over records to a taxpayer after you are advised that the taxpayer is under tax investigation by intelligence, as happened here?

A. At the direction of my employer.

Q. That is Tannebaum, is that so?

A. Tannebaum, Bindler & Lewis.

Q. Now, sir, I would direct you to what has been marked as (Government's) Exhibit 5 and I am sorry you don't have it—(handing instrument to witness).

This is the power of attorney, is it not?

A. (Witness looks.) That is true.

Q. Did you prepare that power of attorney and present it to the special agent on January 5 when he served you with the summons?

A. No, I did not.

Q. There was no such power of attorney in existence at that time, was there?

A. Yes, there was.

Q. Did you have a copy of it?

A. I did.

Q. Did you execute that, did you sign it?

A. Yes, I did.

Q. When did you sign it?

A. January 3rd.

Q. You signed it January 3rd?

(38) Q. In other words, after the phone call we have been talking about, the phone calls, you apparently visited with Kasmir later in the afternoon?

A. That is true.

Q. Where was that particular form prepared, in Kasmir's office?

A. It was prepared in our office.

Q. Well, I notice on the back it was not notarized. Any particular reason for the failure of the notary?

A. Being signed by an attorney licensed to practice in the State of Texas and a certified public accountant, I don't believe it is necessary to notarize it.

Q. Well, sir, let me ask you this, out of curiosity.

You say that you went over to see Kasmir—I presume his office was fairly close?

A. Yes.

Q. You walked over there?

A. Yes.

Q. But you didn't turn the records over until the following day. Now, what was the reason for that?

A. Well, first of all, I was not supposed to turn the records over to Kasmir; I was directed by my employer and the taxpayer to turn the records over to him.

Q. Oh, I see; you were not supposed to turn them over directly to Kasmir; they had to go to the taxpayer (39) first; is that correct?

A. I delivered them to the taxpayer.

Q. Uh huh.

Q. What the taxpayer did with them, I do not know.

Q. You don't know; you were just following instructions?

A. That is correct.

THE COURT:

Did you say you were there when the taxpayer handed them to Kasmir?

A. Yes, sir.

THE COURT:

So you do know where they went?

A. Yes, I do know.

Q. You gave them to the taxpayer and then you say you were there when the taxpayer gave them to Kasmir?

A. Yes, sir.

Q. And that took place all at one time?

A. Within a short period of time.

Q. Within five minutes?

A. Five to ten minutes.

Q. Now, sir, please direct your attention to (Government's) Exhibits 3 and 4 (handing to witness), specifically Exhibit 3; you signed that exhibit 3, did you?

A. (Witness looks.) Yes, I did.

Q. And that was on the 15th?

A. Yes, it was.

(40) Q. I see. Who prepared that statement?

A. The attorney.

Q. I see. Did he have a discussion with you as to what was to appear in this statement before it was prepared?

A. Yes.

Q. Do you agree with that statement?

A. Yes, sir, I do.

Q. Well, because we don't know, you can merely answer "yes" or "no"—

Pursuant to the summons directed to you—that is the exhibit 1 or 2 there—your firm did, and you had orders, did you not, to retain copies of the tax return for the three years under investigation?

A. Yes, sir.

Q. And you did deliver, did you not, the accountant's work papers?

A. I delivered the work papers, yes.

Q. And you did deliver, did you not, other correspondence and miscellaneous data described in the summons?

A. Yes.

Q. And, of course, Mason gave you a receipt, is that correct?

A. That is correct. He signed the receipt that I have.

Q. Now, why did you require a receipt?

(41) A. As a standard practice in our office, whenever we deliver any records either belonging to us or belonging to the taxpayer, we require a receipt, acknowledgement that those records have been turned over.

So that you have got this receipt, and when you get the records back you will know what you gave up and what you are supposed to get back?

A. That's right.

MR. SNOW:

All right. Any further questions would belabor the point. I have no further questions now.

CROSS EXAMINATION

BY MR. COPLEY:

Q. Mr. Candy, except at the direction of Mr. Tannebaum, your employer, did you ever have possession of the tax returns and related data for the years 1969 and 1970?

A. No.

Q. What was the purpose of your having possession of those records for 1969 and 1970?

A. I wouldn't have had them for any reason, other than for comparison to see what items would need to be picked up in the 1971 income tax return.

Q. And did you make such a comparison?

A. Only with 1970.

(42) Q. Did you take the 1969 and 1970 returns and the 1971 returns and all of the related documents with respect to those three years, at the direction of Dr. Mason, and at the direction of your employer, and give them physically to Dr. Mason?

A. Yes, sir.

Q. Did you give them to Mr. Kasmir at any time?

A. No, sir.

Q. Now, I want to make sure I understand the situation on this receipt.

This receipt was prepared on January 3rd?

A. Yes, sir.

Q. And in the morning of January 4 you delivered the records to Dr. Mason?

A. Yes.

Q. And he signed that receipt?

A. Yes, sir.

Q. Did he sign that receipt at that time?

A. Yes, sir.

Q. I guess I had better ask you, and no one has asked; what is the nature of Dr. Mason's business?

A. He is a doctor, physician.

Q. A practicing physician?

A. Yes, sir.

Q. Where is his office?

(43) A. 2516 Forest Avenue.

Q. At any time subsequent to the time of the delivery of the documents to Dr. Mason, have you had possession of those documents?

A. Yes, sir.

Q. You have?
A. You mean after?
Q. After.
A. Oh, no; not after.
Q. Let me make this clear.
From the time that you delivered the documents to Dr. Mason on January 4, have you ever had possession of them?
A. No, sir.
Q. Since that time?
A. No, sir.
Q. Now, let me direct your attention to the meeting you had with special agent Mabry on January 5.
Did Special Agent Mabry ask you who prepared the 1969 or 1970 returns?
A. Yes, sir, he did.
Q. And what was your reply?
A. I told him I did not know; I would have to ask my employer.
Q. Did you tell him who your employer was?
A. Yes, sir, I did. I told him Sam Tannebaum.
(44) Q. What did he say to that?
A. He said, in leaving, that he guessed he would have to summons him, also.
Q. Summons Mr. Tannebaum also?
A. Yes, sir.

MR. COPLEY:
That is all we have, Your Honor.
THE COURT:
All right.
MR. SNOW:
Your Honor——
THE COURT:
Any redirect examination?
MR. SNOW:
Short redirect examination, Your Honor, or recross.
THE COURT:
Go ahead.

REDIRECT EXAMINATION

BY MR. SNOW:
Q. Mr. Candy, I have just one question and I would appreciate an honest answer.

You had access to all of these records under the summons any time you required them, did you not?
A. I don't think I understand.
Q. You had access to all of the records which were summonsed at any time you required them, did you not?
A. Prior to the summons?
Q. Sure.
A. Yes.
(45) Q. Sure.
A. I had access.
Q. Because there might be a loss carry-over that you might have to go back and look at the previous papers and so on, isn't that right?
A. After or before?
Q. Before; before.
A. Before, yes.

MR. SNOW:
Of course. Thank you. No further questions.
MR. COPLEY:
Your Honor, just one question on direct examination.
THE COURT:
Go ahead.

RECROSS EXAMINATION

BY MR. COPLEY:
Q. In what capacity did you have access to those records?
A. As an employee.
Q. If Mr. Tannebaum directed you not to have access, would you have honored those instructions?
A. I would have had to.

MR. COPLEY:
No other questions.
MR. SNOW:
One further question.
(46)

RE-REDIRECT EXAMINATION

BY MR. SNOW:
Q. But the instructions were, whenever it occurred, that only occurred after you received the call from Mason on the 3rd, isn't that so?
A. The direction not to have access?
Q. Yes.

THE COURT:
You never got such access?
A. I never got direction not to have access.
MR. SNOW:
Oh. I see. I am sorry. Excuse me. No further questions.
MR. COPLEY:
Nothing further.
THE COURT:
Step down.

(Witness excused.)

THE COURT:
Who will you have next?
MR. SNOW:
We would like to have attorney Kasmir.

C. D. KASMIR,

one of the Respondents, called by the Petitioner, having been first duly cautioned and sworn, testified on his oath as follows, to wit:
(47)

DIRECT EXAMINATION

BY MR. SNOW:
Q. Now, let's just go day by day—excuse me, Mr. Kasmir. Please state your full name and your address, please, sir.
A. Cyril David Kasmir; 5227 North Moore, Dallas.
Q. Now, Mr. Kasmir, let's go back to January 3rd.
Now, on that date in the afternoon, probably around three o'clock, and correct me if I am wrong, you received a call from accountant Candy, is that not true?
A. That is correct.
Q. And what did he say to you and what did you say to him?
A. He advised me that the special agents of the Internal Revenue Service were at Dr. Mason's office, and that he had instructed Dr. Mason, and Dr. Mason wanted them to talk to him.
Q. And he further advised you, did he not, that he had indicated to Mason that Mason should not show the agents his records in his office?
A. As I recall, I asked Mr. Candy, I asked Mr. Candy what advice he had given to Dr. Mason.
Q. And was that his response to you, generally?

A. As I recall, he told him not to answer any further (48) questions or to produce any documents.
Q. Then did you issue any instructions to Mr. Candy at that time?
A. No. I instantly called Dr. Mason.
Q. All right. I see, and you told Mason that, in your opinion as counsel, he should not show any more records and not testify, is that correct?
A. I asked Dr. Mason who was visiting him, who was calling upon him, and he told me it was special agents from the Internal Revenue Service, that they had given him what I termed the Miranda warning, and I advised him to respectfully decline to say anything and respectfully decline to give them any records, and to give them my name and phone number and I would be happy to talk to them subsequently.
Q. Now, after you had that call to Mason, what, if anything else, did you do on that afternoon, January 3rd?
A. Relative to what?
Q. Well, relative to this instant investigation; did you again contact the accountant or not?
A. As I recall—I just don't recall, to tell the truth.
Q. Okay. Well, I don't know; you know. On January 4th were certain records put in your possession?
A. On January 4th at approximately 7:30 in the morning I was at Dr. Mason's office on Forest Avenue, and in (49) my presence Mr. Candy handed over to Dr. Mason a large amount of files and records, and Dr. Mason signed the receipt for them that I believe you have marked as an exhibit.
Q. You then picked up the records and put them in your car?
A. No, I did not. Dr. Mason took possession of those records, signed the receipt, turned around and handed them to me and I went and placed them in my car.
And Dr. Mason and I went into his office and he gave me other records and he had in his office and he helped me put them in my car. This was about 7:30 o'clock in the morning.
Q. So that was your next contact with either Candy or Mason after the telephone call the previous day to Mason?
A. Well, we had had some discussion about when Mr. Candy was going to return the records.
Mr. Candy originally, I believe, was going to go out there

that evening; that is probably the reason the receipt stated the 3rd; and I believe Dr. Mason had an emergency or something and we just decided to make it the next morning.

Q. Now, sir, when was your legal relationship initiated with Mason, on the 1st, on the 3rd—?

THE WITNESS, KASMIR:

Your Honor, I respectfully (50) decline to answer this question, based upon the attorney-client privilege.

MR. SNOW:

We would ask that he be directed to answer, Your Honor; the attorney-client relation pertains to confidential communications. I am asking him for no communication; I am asking him for records that were already complete before he ever got them or got into the case.

THE COURT:

Restate your question.

BY MR. SNOW:

Q. When were you retained by Mason, what date, what time?

WITNESS, KASMIR:

Your Honor, for the same reason, I respectfully refuse to answer.

THE COURT:

I will overrule the objection. He is asking you when you were retained; he is not asking you any confidential statements.

A. I would say I was retained on January 3rd.

Q. In the late evening.

A. I would say approximately 2:30 or 3:00, whenever the phone call was made.

Q. When you made the phone call to Mason?

A. Yes.

Q. Then I assume that, since Candy called you, that you and Candy had worked on other matters prior to this?

A. Yes, we had.

(51) Q. You had not represented Mason prior to this?

A. No, sir, I had not.

Q. Now, am I to further understand, judging by your answer, that you and Candy came to some type of an employment arrangement on the 3rd or 4th?

A. Yes; we have a copy of that agreement, that contract, attached to our response

MR. SNOW:

If it please the Court, I would ask that this be admitted into evidence as an exhibit.

MR. COPLEY:

No objection.

(REPORTER'S NOTE: At this point, photocopy of instrument entitled Employment Agreement, consisting of three pages, signed by Cyril David Kasmir and Jerry A. Candy was marked as:

GOVERNMENT'S EXHIBIT NO.7.)

BY MR. SNOW:

Q. Then, sir, (Government's) Exhibit 7, is that the agreement, a copy of that agreement (handing to witness)?

A. (Witness looks.) Yes, it is.

Q. I see, and you gave the agreement to Candy, I presume, at Mason's office on the 4th, is that correct?

(52) A. No, it is not so.

Q. Well, what is so?

A. As I recall, I had my secretary type it up that afternoon and Mr. Candy came over and signed it.

Q. And did you prepare this power of attorney?

A. No. It was given to me by Mr. Candy.

Q. And then it is your testimony that after signing this—strike that.

Now, we go to January 5th; did you receive a summons on that date, is that so?

A. I was served by Special Agent Mabry with a summons, yes, that's correct.

Q. And that is at the time that you indicated to him that the records belonged to the accountant firm, is that so?

A. As I recall, I was rushing to go to a court hearing at the particular time, and Mr. Mabry caught me as I was leaving. He asked me if I had the records—I don't remember exactly the conversation, but I did respond, yes, I did.

MR. SNOW:

No further questions. The Government rests it case.

THE COURT:

Well, you may not; you may have some redirect.

MR. SNOW:

Excuse me, Your Honor.

THE COURT:

You had better wait until the cross (53) examination is over.

CROSS EXAMINATION

BY MR. COPLEY:

Q. Mr. Kasmir, how long have you been practicing law?

A. I was licensed by the Supreme Court of the State of Texas, I believe in 1969.

Q. Where did you go to law school?

A. I went to the University of Texas and received a Juris Doctorate Degree; I went to SMU Law School the year thereafter and received a Master in Taxation.

Q. Do you practice law with a firm?

A. Yes, sir; I am a member of the firm of Fischman, Rosenberg, Kasmir & Preston.

Q. Did Mr. Mason issue any instructions to you—

MR. COPLEY:

Your Honor, here I want to get into only the question of the files and communications.

Q. (Continuing)—did he issue instructions to you as to the delivery of the files?

MR. SNOW:

We will object, Your Honor; any answer that he can give is based on hearsay; if Mason delivered any such instructions, Mason is the same to so testify.

THE COURT:

I am going to overrule the objection.

A. Yes, he did. They were primarily—there was (54) one really controlling reason; Dr. Mason was concerned about how secure the files would be there in his office. His office is on Forest Lane (sic) and predominantly or totally a black neighborhood.

Q. Forest Lane?

A. Forest Avenue; excuse me.

So, he has had a serious problem with theft of property and money, and he was very concerned about how safe the records would be there, and I assured him that I had a secure place to keep them, and he also wanted me to take them and protect them.

Q. Protect them?

A. Yes.

Q. Protect them from what?

A. Well, he wanted me to protect them from any unauthorized or illegal search and seizure; he wanted me to assert any rights that he might have to protect them.

Q. When you said that you worked on other matters with Mr. Candy, would you explain that?

A. Mr. Candy is our firm's accountant, or the firm that Mr. Candy is employed by, or he is an employee of Tannebaum, Bindler & Lewis, who we deal directly with; I've handled various matters for clients of his; he has handled various matters for clients of mine; we have been friends for probably fifteen years, and we were classmates together, (55) also. That is when I was in SMU on my master's in tax, and Mr. Candy and I were in a couple of classes together.

Q. Had you worked on any tax fraud matters with Mr. Candy?

A. No, I haven't.

Q. Have you worked on any tax fraud matters at all for clients?

A. No. This is the first one.

Q. Well, I guess that brings up the question of, how did you know or what caused you to take all of this action that you took on those days, January 3, 4 and 5?

A. One of the courses I had at SMU was tax procedures, tax procedures and litigation, taught by Mr. Kopp Williams and Mr. Herb Kendricks, and my recollection is that we spent nine class hours analyzing tax fraud investigations, and what you do in the event a special agent appears—

MR. SNOW:

Your Honor, we will object to this testimony; it seems self-serving and certainly not material to the issues in this matter.

THE COURT:

I don't think it is. I am not interested in all of your education background on this.

MR. COPLEY:

Your Honor, the only reason that I instituted—the only reason that I asked this was that I get the impression that the Government is trying (56) to create, that some of these documents were not executed on the dates they were exe-

cuted; I get the impression, from the questions they asked Mr. Kasmir about other matters with Mr. Candy, that they had a modus operandi in tax fraud cases, but that is the only reason I asked the question.

THE COURT:

Well, he said this is the first tax case he has been involved with, so I don't think that you have to prove that.

MR. COPLEY:

We have no further questions.

REDIRECT EXAMINATION

BY MR. SNOW:

Q. Now, Mr. Kasmir, are you aware that Dr. Mason does a big medical business—I am sorry I have to use that phrase—are you aware of that?

A. Yes, sir.

Q. Now, you indicated, I think, in your examination to counsel that his office was located in an undesirable neighborhood.

A. Yes.

Q. Is that so?

A. Yes, sir.

Q. Do you live down there?

A. No, sir, I don't.

(57) Q. Yourself?

A. No, sir, I don't.

Q. So, I see, and were you ever present when any theft occurred down there at that office?

A. No, but he has related many instances of theft in the area, and instances in his office, and he has also related to me that he is afraid to stay at his office at night because he is afraid of being mugged.

Q. Well, you are not familiar——

THE COURT:

Now, wait a minute. He just asked if you have been there.

A. I am sorry.

THE COURT:

He has asked you if you have been there during any thefts?

A. Had I been there during any theft?

Q. Yes.

A. No.

THE COURT:

He wasn't hired until the 3rd, so he wouldn't know.

MR. SNOW:

But, again, Your Honor, I am renewing my objection to that series of questions made by Counsel Copley, as to what the doctor may or may not have indicated to his counsel, Mr. Kasmir; it is hearsay and simply not admissible, in my opinion, into evidence.

(58) THE COURT:

I will overrule the objection. It is before the Court. Anything else?

MR. SNOW:

Nothing else, sir.

THE COURT:

Do you have anything else?

MR. COPLEY:

No, sir.

THE COURT:

Thank you, Mr. Kasmir.

THE WITNESS:

Thank you.

(Witness excused.)

MR. SNOW:

Your Honor, although I was premature before, at this point the Government rests.

THE COURT:

The Government rests?

MR. SNOW:

Yes, sir.

THE GOVERNMENT RESTS

THE COURT:

Do you have any testimony?

MR. COPLEY:

Your Honor, we have brought out in court on cross all of the matters we want to bring out.

THE COURT:

So, both sides close?

MR. SNOW:

Yes, sir.

MR. COPLEY:

Yes, sir.

TESTIMONY CLOSED

(59) THE COURT:

Let me hear from the Government their argument in this case.

ARGUMENT OF COUNSEL FOR PETITIONERS

MR. SNOW:

Your Honor, the case is similar to the Texas case cited in our Memorandum of Law filed right after I got the Answer yesterday.

The Texas case in the Southern District, the United States of America versus Baldridge, the citation listed.

Everything here, Your Honor, occurred after the parties —that is, the doctor and his accountant, Candy, were aware that there was a tax investigation.

I refer to it as the shell game to put the records out of the reach of the Government.

They went so far as to convene the three people, Kasmir, Candy, and the doctor, for a shuffle the next day there at the office, and then the records wind up at the attorney's office.

Then according to Baldridge, Zakutansky, according to Deck, according to a case I have in Michigan, Sixth District, Widalsky, this is not legitimate behavior, and the Court will not sanction this type of a thing.

(60) The key is not when the summons was served; it is when the taxpayer knew he was under investigation, the taxpayer and, of course, in this case, the accountant, and the evidence here shows without contradiction that that was known before the turnover and, in fact, caused the turnover.

In Widalsky, Your Honor, the information was known eighteen months prior to the summons—eighteen months prior; here we don't have it eighteen months prior, we have it one day prior, or one hour prior.

It simply is not legitimate behavior, and to carry it out to its logical conclusion would mean that the Government would never see any records, you see, because this circumstance would always happen as soon as an investigation occurred, the accident would move out the records through this process of handing them to the taxpayer, who hands them to his attorney; and then asserts the attorney-client privilege.

Of course, the attorney-client privilege is not relevant here. We have asked Mr. Kasmir for no such testimony, and have so indicated in this record.

We are asking him for all of those records which were already in existence prior to the time that relationship started. That is all we are asking.

What testimony are we asking from Candy?

(61) Explanatory testimony on the records, that is all; we are asking Candy nothing about anything that might have happened since his relationship in the instant case with Kasmir was convened; we don't want to know that.

The Fourth and Fifth Amendment arrests, that is covered by the Supreme Court in Couch.

When the accountant has the records, there is no Fourth or Fifth Amendment situation, that is what the Supreme Court simply says; we have the records here because he never legitimately turned them over, and if he did, he turned them over to the attorney and the taxpayer never had any legitimate possession and, again, if we were to concede that then it was done under an illegitimate means, according to the cases I have related.

Notwithstanding that, the taxpayer has not even appeared today to raise the Fourth and Fifth Amendments. So, we don't know where we really are; he has to raise it.

THE COURT:

He is not a party to these proceedings.

MR. SNOW:

No, sir, he isn't.

We don't have to disprove the negative, Your Honor; he never even raised it, but, in any event, we are relying upon Baldridge, Widalsky, all of these cases.

(62) I mean, I think, Your Honor, frankly, candidly, these cases explain where the facts are, and we hope we can have relief.

THE COURT:

Mr. Copley——

ARGUMENT AND SUMMATION OF COUNSEL FOR RESPONDENTS

MR. COPLEY:

Your Honor, the facts, I think, are apparent to you in this case.

Mr. Candy never had possession of '69 and '70; at the

time he was summonsed he did not have possession of any of those records; he was only an employee of the CPA firm.

Now, Mr. Kasmir, the attorney, had possession on behalf of his client.

Government Counsel says the Fourth and the Fifth Amendments have not been asserted.

We sure tried, Your Honor, because we have got it in our response that on behalf of the taxpayer and acting under the instructions of the taxpayer, Mr. Kasmir raised the Fourth and Fifth Amendments.

Couch, a Supreme Court case, which we think is entirely consistent and supportive of us, says, quote

"That the rights and obligations of the parties became fixed when the summons was served, and the (63) transfer did not alter that"—end quote.

The transfer in Couch was made after the service of the summons.

In Foster-Lewis, United States District Court for the Western District, cited in our amendment, Judge Spears stated that at the time—I will not quote him directly; more in short order, he stated that——

A the time the summons was issued the records were in the hands of the attorney.

And the big distinguishing factor between that case and ours is the two days ahead of time there, and one day here.

But, Judge Spears says, in his Order, that they were in the hands of the attorney acting for the taxpayer in purely representative capacity.

I don't think this case is one that, as Government counsel says, cries for relief, Your Honor, for the Government.

The taxpayer delivered these records, according to the instructions received by Mr. Kasmir, for the purpose of Mr. Kasmir protecting these records, and if you can't rely upon your attorney to protect the records, we don't know where we are under the law.

It seems to me that the Government had given a warning to the taxpayer in this case, and he has a right (64) to consult his attorney.

Now they complain and claim that the taxpayer is taking action based upon the advice of his attorney to preserve his constitutional rights.

I just don't think those two things match; it is clear

from the testimony, especially Mabry, that this is a criminal oriented investigation.

Now, in the concurring opinion—we don't rely on the concurring opinion in Couch entirely, Justice Brennan, but I think it is relevant.

If the taxpayer had possession of these records today and had had it continuously from the time that Mr. Candy delivered them to him, I would presume the Government would not try to collect those records from the taxpayer.

The taxpayer has the right to keep those records in a safety deposit box, subject to his dominion and control;

He has the right to keep them in his office, subject to his dominion and control, and at this own risk, I suppose, from theft;

But he has the right to keep them in his office, in a safe deposit box, to hire a bailee, custodian, to keep them for him, and we think that, if anything, the right to put them with his attorney to protect (65) them is stronger than any of these other reasons.

THE COURT:

You are saying he put them with Mr. Kasmir to protect them for what reason?

MR. COPLEY:

To protect them for two reasons:

First, and I think primary, to take them in reverse order of the testimony, but, primarily, to protect them, in reliance on his Fourth and Fifth Amendment rights, from the Government investigation, all of which was done prior to the service of the summons.

We don't claim, Your Honor, this was done accidentally; we knew—Mr. Kasmir and Mr. Candy—at the time they knew what they were doing, I think the evidence would reflect, and the records were in the possession of the taxpayer; he gave them to Mr. Kasmir for the purpose of protecting them from this Government audit.

Now, we don't see any illegitimacy under that type of a transfer, neither did Judge Spears in the Foster-Lewis case.

Couch, the Supreme Court case, which is the latest case, January of this year, on all of these matters—

Couch says that the rights of the parties became fixed at the time the summons was served. Now——

THE COURT:

Well, they were in Kasmir's custody (66) at that time?

MR. COPLEY:

At that time, Your Honor.

Now, the Government says it has no remedy in this matter.

I am not trying to tell the Government how to conduct its audits.

There would have been no prohibition for the Government to issue a subpoena or summons when they walked into Dr. Mason, and they could have walked out—a summons is not the most difficult document in the world to prepare, and they could have gone down and served Mr. Candy or Mr. Kasmir, but they didn't have those documents—Mr. Kasmir didn't have them on the 3rd.

They could have served Mr. Candy, and if he had possession of them on the 3rd, as he did, and on the basis of Couch, we would have no standing to say that Mr. Candy, as the accountant, could protect those records.

THE COURT:

What is the difference between Kasmir and Candy?

MR. COPLEY:

Mr. Kasmir here stands in a different capacity here from Mr. Candy.

First, he is an attorney, who was hired by Dr. Mason to protect the records.

(67) Now, Your Honor, we think that Dr. Mason could have hired a national bank in Dallas and used their safety deposit box, and those documents would have been in Dr. Mason's possession, even though they were physically situated in downtown Dallas.

If he can do that with a bank, with a bailee—I mean, he doesn't have to carry the records around all of the time to have possession—

Then it would seem to me that he can certainly do that with his duly authorized attorney hired for that very purpose.

We think that he could do that by hiring someone as an employee who is not an attorney, to keep custody of the records on behalf of Dr. Mason.

We certainly think that he can hire an attorney to take possession of those records from Dr. Mason for the express purpose of protecting them from this audit.

We just don't see the difference—

THE COURT:

What do you mean, hiring them to protect them from the audit?

MR. COPLEY:

Criminal investigation.

THE COURT:

You mean, just to keep them away from the Government? On what basis can he protect them from the audit? That is what I want to know.

MR. COPLEY:

Well, let us suppose that the records (68) never left Dr. Mason's possession.

We say that if the Government came to Dr. Mason and he had possession of the records, that Dr. Mason could successfully assert the Fourth and Fifth Amendments.

All right. He, Dr. Mason, transferred the physical possession to Mr. Kasmir, but he didn't transfer possession unrestricted from Dr. Mason's control; he directed them to Mr. Kasmir for the express purpose that Mr. Kasmir, as his attorney and representative, assert the Fourth and Fifth Amendments.

We don't think that the fact that Mr. Mason—Dr. Mason—

THE COURT:

How can he assert Dr. Mason's Fourth and Fifth Amendment rights?

MR. COPLEY:

In a representative capacity, Your Honor, when he is summonsed to produce records that do not belong to him. They do not belong to Mr. Kasmir; they belong to the taxpayer. They have been delivered conditionally to Mr. Kasmir.

THE COURT:

Suppose he delivered them to Mr. Candy and said, "I want you to assert my Fourth and Fifth Amendment privileges"?

MR. COPLEY:

He didn't.

THE COURT:

Suppose he did?

(69) MR. COPLEY:

I think if he did we would be on weaker ground, Your Honor.

THE COURT:

What makes it any different because Mr. Kasmir has them, as opposed to Mr. Candy?

MR. COPLEY:

Well, Your Honor, I suppose the facts of the cases. There are some cases that where the records end back up in the hands of the accountant, the cases tend to hold that they never really left the accountant.

Now, here there doesn't seem to be any question that they left the possession of the accountant.

The accountant, of course, is not an attorney.

We think that the taxpayer, if he is unable to hire an attorney, that the Government, in effect, warns him he has the right to do, then he is left defenseless in a case like this.

There is Couch there is language that if records are stolen from the taxpayer, and without any connivance, so to speak, the Government legitimately seizes those records in the hands of the thief, there is language in Couch to indicate that the Government can use those records and that the taxpayer, because he doesn't have possession, doesn't have the right to assert the Fifth Amendment.

In this case the taxpayer's clear intent was to (70) preserve and enhance his right to assert the Fifth Amendment.

That is the reason we think that Mr. Kasmir is standing in the taxpayer's shoes under instructions as an attorney to protect him under the Fourth and Fifth Amendment.

We also think, Your Honor, in—I don't know that it is controlling. I think it is highly significant.

Mr. Candy, as to '68 and '69, just didn't have the records; never had them; they didn't belong to him; he was an employee.

Surely they couldn't serve Mr. Kasmir's secretary because she may have had access to these records in his files and claim that she has got to produce them, because she is not an attorney.

Your Honor, this case has developed rapidly; the petition was filed last Thursday, I believe—I mean, served last Thursday; we filed our response on the date ordered by the Court.

If the Court would choose, we would welcome the opportunity to file more detailed briefs on this matter, but we think the issues as set forth in Couch, as buttressed by

a case which is as nearly in point as any case, Foster-Lewis, as we have cited, is almost the exact fact situation, except there was two days (71) circumstances, and that it is controlling.

The Government is complaining of the sequence of events on the time. It should make no difference.

The fact that the Government moves fast or slow, if they had not chosen to see Mr. Candy or Mr. Kasmir for six months, that is really not controlling.

The fact is that when they did see them and they saw Mr. Candy, he did not have possession, and when they served Mr. Kasmir, he had possession only on instructions from the taxpayer to protect these records.

That is our argument, Your Honor, and we respectfully request the Court to deny the relief sought.

THE COURT:

All right. I will hear from you briefly. Here in your notice you ask that—or in the summons, insofar as it relates to Candy, it provides that Candy is to appear for testimony, is that correct?

MR. SNOW:

Yes, Your Honor. Explanatory testimony concerning the records involved.

THE COURT:

All right. Go ahead.

FINAL ARGUMENT AND SUMMATION OF COUNSEL FOR PETITIONERS

MR. SNOW:

First, Your Honor, we have to distinguish what records we are talking about here.

Counsel made reference to the summons served upon (72) the taxpayer, Mason, for records in the doctor's office.

We are not seeking those records; we would be faced with futility, obviously, as he would have the privilege against self-incrimination, and we don't do needless acts usually.

We are talking about the records which belong to the accountant; they belonged to the accountant because nobody indicated otherwise.

And I would cite, Your Honor, the Zakutansky case cited in our brief, at page 78, and it states, and I quote verbatim——

"Accountants' work papers are property of the accountants unless shown to the contrary."

Here, certainly, if you please, up to the evening of January 3rd or January 4th, there is no question but that all of these records which we are seeking were accountants' records. There is no question, either, that the summons was directed to the Tannebaum firm and Jerry Candy.

There is no question, and Candy says here on the stand that he had access to all of these records.

I think that counsel is making some type of semantical argument, and I want to be sure what records we are talking about.

We are not talking about Mason's ones which he (73) was retaining in his office and which he withdrew from the agent, but the ones which had been certainly since 1969 and on down at the accountants' office, and there they remained; there they remained consistently.

We didn't hear otherwise; they were there consistently until January 4th.

Now counsel will refer to Couch and other cases concerning protection of taxpayers and so on, but counsel states the conclusion—certainly, if records had been in the possession of the attorney prior to the time that the taxpayer or anybody else found out about the investigation the Government would be in a much tougher spot, but that wasn't the case.

I might remark, Your Honor, that in Couch, on looking at Couch, which is attached to our brief, on September 18th the parties in Couch found out about the investigation—the accountants who had the records in Couch; Couch's accountants records; okay.

They found out on the 18th, and the summons was served on the 18th. Okay?

The records were then moved over; they were moved over to the attorney, and the Court said, simply——

"The taxpayer never had legitimate possession of these"—and I quote——

"The ingredients of personal compulsion against an (74) accused is lacking. The summons and the order of the District Clerk are directed against the accountant."

Is not that the same thing here, Your Honor, because here we have the additional factor of knowledge; in Couch

the knowledge occurred on the date of the summons; in this case it didn't.

This case is akin to the Baldridge case in Texas, the many other cases, the Widalsky case.

That is the difference. Couch, of course, ruled in favor of the Government.

Now, our position is in accord with Couch, also, because these were accountants; papers, Your Honor.

Couch states, and I quote——

"The Fifth Amendment is a personal privilege that adheres basically to the person and not to the information which may incriminate him."

As Justice Holmes put it, a party is privileged from producing the evidence, but not from its production.

Dr. Mason was privileged from production of what he held in his office; we know that; but he is not privileged from the conducting of a legitimate investigation of the accountants' records, and that is what they were; that is what they were.

I reiterate, Your Honor, and respectfully submit (75) that no additional briefs are needed, and the facts are clear as to what happened.

I consider it, frankly, rather insulting to imply that the Internal Revenue must assume that these type of things happen consistently, and that as soon as they contact the taxpayer, they should run to the accountant and immediately summons him. I don't think that is correct.

I have no further remarks.

THE COURT:

I am going to grant the relief prayed for by the Government.

I feel that these are records of the accountant that are being requested, and I believe, under Couch, that the Fourth and Fifth Amendment privileges are not applicable in this case.

I feel that, first, they are the accountant's records, and that is all that is being asked for; and

The taxpayer can't make them a part of his records by requesting the accountant to deliver them to him.

I also find that at the time the summons was served the records were in the possession of Mr. Kasmir, and that,

being in his possession, the Government is entitled to obtain the records from Mr. Kasmir.

MR. SNOW:

May I prepare an order, Your Honor?

THE COURT:

Well, I am going to direct the (76) Government to prepare an order.

I am going to suggest that Mr. Mabry work out some convenient time with Mr. Candy and Mr. Kasmir as to their appearances, at some reasonable time, and accommodate both sides.

MR. COPLEY:

Your Honor, the taxpayer intends to appeal this case.

THE COURT:

All right.

MR. COPLEY:

After the Court enters its order, may we ask for a stay, pending appeal?

THE COURT:

Yes. I will give you a stay pending appeal.

MR. COPLEY:

Thank you.

MR. SNOW:

If that is the order, Your Honor, may we—we would like to submit something on that. May we ask that the records involved be placed in the custody of the Court and the Court retain them?

THE COURT:

Well, Mr. Kasmir has the records, and he is an officer of this Court, and I am not concerned about it, anything happening to the records. He is an officer of the Court, and I am satisfied that he will preserve those records as existed at the time they were delivered to him. I am going to deny that request.

MR. SNOW:

Your Honor, I will get together with (77) counsel and we will arrange a time, and I will have the order on your desk at that time.

THE COURT:

All right. You can have the order as promptly as you want to, and then you can make your appeal, Mr. Copley.

MR. COPLEY:

Yes, Your Honor. There is no need to arrange a meeting,

because that is the whole purpose of the appeal.

THE COURT:

Well, just prepare your order. I think your order will provide that they are to appear and appear at the direction of the Internal Revenue Service, or if you want to put a specific time and place, you can include it in the order.

MR. SNOW:

Your Honor, I would have one further request. As His Honor knows, there is a six-year statute of limitations here, and we are looking at 1969, and the statute continues to run. If a stay is to be granted, we would like to be heard on it, but, in any event, if one is granted, we would ask that an expeditious appeal be made.

THE COURT:

I am for that, for an expeditious appeal, but you had better take that up with the Court of Appeals, because once I sign this order, I won't have anything to do with it.

I think if you file a motion for an expeditious (78) appeal, they will give it to you. The Fifth Circuit is rather accommodating.

MR. COPLEY:

Your Honor, we have no objection to a prompt disposition of the case on appeal. I might say, the limitation doest run until 1976, for the earliest year involved.

THE COURT:

Is it six years?

MR. COPLEY:

From the time of filing the return.

MR. SNOW:

That is correct.

THE COURT:

In 1970 he filed the return?

MR. COPLEY:

For 1969.

THE COURT:

All right.

MR. COPLEY:

The earliest it could run would be April of 1976.

THE COURT:

Well, I believe it will be over with by then.

BY COPLEY:

I would think so.

MR. SNOW:
It hasn't started yet, Your Honor. We hope so.
THE COURT:
All right. You get your order down. The quicker you get your order in, the quicker the appeal will start.
MR. SNOW:
All right.

THE COURT:
Thank you, Mr. Kasmir, Mr. Candy, Mr. Mabry.
(79) All right. We will be in recess until 1:30 this after-

END OF PROCEEDINGS

CERTIFICATE

I, CECIL J. LOWRANCE, certify that during the foregoing proceedings I was the official shortland reporter and took in shorthand the proceedings at the Hearing on Petition to Enforce Internal Revenue Service Summons and have transcribed same as shown by the above and foregoing seventy-nine pages; and that said transcript is true and correct.

Dated this 9th day of April, A. D. 1973.

s/ Cecil J. Lowrance
CECIL J. LOWRANCE
Official Shorthand Reporter
U. S. District Court

[Government Exhibit 1]

Form 2039 (Rev. Oct. 1969)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of
EDWARD J. and RAE A. MASON
2516 Forest Ave. (or)
2207 Millerwood, Dallas, Texas

Internal Revenue District of Dallas, Texas

Period(s) 1969, 1970, and 1971

GOVERNMENT EXHIBIT 1

73-1973

The Commissioner of Internal Revenue

To Jerry A. Candy
Tannebaum Bindler & Lewis
At Dallas, Texas

Greetings: You are hereby summoned and required to appear before James S. Mabrey, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

Testimony.

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970, and 1971.
2. Retained copies of E. J. Mason's income tax returns for 1969, 1970, and 1971.
3. Retained copies of reports and other correspondence between Tannebaum Bindler & Lewis and Dr. E. J. Mason during 1969, 1970, and 1971.

Place and time for appearance:
at Room 11C47, 1100 Commerce, Dallas, Texas
on the 15th day of January, 19 73 at 9:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code
this 5 day of JANUARY, 19 73

Original — James S. Mabrey, Special Agent
Signature — Title

Form 2039 (Rev. 10-69)

BEST COPY AVAILABLE

Certificate of Service of Summons

(Pursuant to Section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
1-5-73	0905

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed.

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature	Title
James S Mabrey	Special Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Form 2039 (Rev. 10-68)

[Government Exhibit 2]

Form 2039 (Rev. Oct. 1968)

Summons

Department of the Treasury
Internal Revenue Service

GOVERNMENT EXHIBIT 2

'73 JAN 1973

In the matter of the tax liability of
EDWARD J. and RAE A. MASON
2516 Forest Ave. (or)
2207 Millersmore, Dallas, Texas

Internal Revenue District of Dallas, Texas

Period(s) 1969, 1970, and 1971

The Commissioner of Internal Revenue

To C. D. Kasmir

At Fishman and Associates, Dallas, Texas

Greetings: You are hereby summoned and required to appear before James S. Mabrey, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

the following records of Tennebaum Binder & Lewis.

1. Accountant's work papers pertaining to Dr. E. J. Mason's books and records of 1969, 1970, and 1971.

2. Retained copies of E. J. Mason's income tax returns for 1969, 1970, and 1971.

3. Retained copies of reports and other correspondence between Tennebaum Binder & Lewis and Dr. E. J. Mason during 1969, 1970, and 1971.

Place and time for appearance:

at Room 11G47, 1100 Commerce, Dallas, Texas

on the 15th day of January, 19 73 at 9:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 5 day of JANUARY, 19 73

Original

James S Mabrey
Signature

Special Agent
Title

Form 2039 (Rev. 10-68)

BEST COPY AVAILABLE

Certificate of Service of Summons

(Pursuant to Section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
1-5-73	0830

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed.

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature	Title
J Edward A Mabrey	Special Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Form 3038 (Rev. 10-68)

[Government Exhibit 3]

GOVERNMENT EXHIBIT 3

At the time I was served with the Summons by Special Agent James S. Mabrey of the Internal Revenue Service I did not possess any of the following records of Tannebaum, Bindler & Lewis:

(1) Accountant's work papers pertaining to Dr. E.J. Mason's books and records of 1969, 1970 and 1971.

(2) Retained copies of E.J. Mason's income tax returns for 1969, 1970 and 1971.

(3) Retained copies of reports and other correspondence between Tannebaum, Bindler & Lewis and Dr. E.J. Mason during 1969, 1970 and 1971.

Prior to the time that I was served with the Summons and in response to the request of Dr. Edward J. Mason, I delivered all of the above-described documents to Dr. Edward J. Mason.

I am presently in the employ of the lawfirm of Fischman, Rosenberg & Kasmir to assist them in analyzing the books, records, papers and documents of Dr. Edward J. and Rae A. Mason and the business, financial and personal affairs of the said Masons insofar as the said Attorneys may deem such assistance to be necessary in the preparation and presentation of the Mason's case. In this capacity, I respectfully refuse to answer any questions at this time based on the attorney-client privilege.

Jerry A. Landy

Jerry A. Landy, C.P.A.

Dated: January 15, 1973

[Government Exhibit 4]

GOVERNMENT EXHIBIT

On January 3, 1973, I was employed by Dr. Edward J. and Rae A. Mason to represent them with respect to their income tax liability for the years 1969, 1970 and 1971, in connection with the audit of their income tax returns and examination presently being made by the Internal Revenue Service.

By virtue of said employment, I respectfully refuse to answer any questions at this time based upon the attorney-client privilege.

Furthermore, on behalf of my clients, I respectfully refuse to produce any documents, books, records or papers at this time based upon the Fourth Amendment's protection against unreasonable searches and seizures and upon the Fifth Amendment's privilege against self-incrimination.

Cyril David Kasmir

Cyril David Kasmir
Attorney at Law

Dated: January 15, 1973

[Government Exhibit 5]

GOVERNMENT EXHIBIT 5

Form **2848** (Rev. Jan. 1970) Department of the Treasury Internal Revenue Service

Power of Attorney

(See Separate Instructions)

Name, address including ZIP code, and identifying number of taxpayer(s)

Edward J. & Rae A. Mason 296-14-7029
2516 Forest Avenue
Dallas, Texas 75215

hereby appoints (name, address including ZIP code, and telephone number of appointee(s))

Cyril D. Kasmir	Jerry A. Candy	Samuel H. Tannebaum
601 Kirby Building	1407 Main, Suite 1422	1407 Main, Suite 1422
Dallas, Texas 75202	Dallas, Texas 75202	Dallas, Texas 75202
214/744-5511	214/748-2233	214/748-2233

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Internal Revenue Service with respect to (specify Internal Revenue tax matters and years or periods):

Income Tax 1969, 1970, 1971

Said attorney(s)-in-fact (or either of them) shall, subject to revocation, have authority to receive confidential information and full power to perform on behalf of the taxpayer(s) the following acts with respect to the above tax matters:

(Strike through any of the following which are not granted.)

To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest.
To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
To execute consents extending the statutory period for assessment or collection of taxes.
To execute closing agreements under section 7121 of the Internal Revenue Code.
To delegate authority or to substitute another representative.

Other acts (specify) _____

Copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above matters should be sent to (Name, address including ZIP code, and telephone number):

and	Cyril D. Kasmir 601 Kirby Building Dallas, Texas 75202 214/744-5511	Jerry A. Candy 1407 Main, Suite 1422 Dallas, Texas 75202 214/748-2233	Samuel H. Tannebaum 1407 Main, Suite 1422 Dallas, Texas 75202 214/748-2233

This power of attorney revokes all prior powers of attorney and tax information authorizations on file with the same Internal Revenue office with respect to the same matters and years or periods covered by this instrument, except the following:

_____
(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of prior powers and authorizations)

Signature of or for taxpayer(s)

If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

_____ (Title, if applicable) 1/3/73 (Date)
(Signature)

_____ (Title, if applicable) 1/3/73 (Date)
(Signature)

Form **2848** (Rev. 1-70)

If the power of attorney is granted to an attorney, certified public accountant, or enrolled agent, this declaration must be completed.

I declare that I am not currently under suspension or disbarment from practice before the Internal Revenue Service, and that:

I am a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
I am duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
I am enrolled as an agent pursuant to the requirements of Treasury Department Circular No. 230.

Designation (Attorney, C.P.A., or Agent)	Jurisdiction (State, etc.) or Enrollment Card Number	Signature	Date
Attorney	Texas	Lyle Davis Kasw	1-3-73
CPA	Texas	Samuel H. Tannenbaum	1-3-73
CPA	Texas	Jerry A. Cuidy	1-3-73

If the power of attorney is granted to a person other than an attorney, certified public accountant, or enrolled agent, it must be witnessed or notarized below.

The person(s) signing as or for the taxpayer(s): (Check and complete one.)

☐ is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

(Signature of Witness) (Date)

(Signature of Witness) (Date)

☐ appeared this day before a notary public and acknowledged this power of attorney as his/her/their voluntary act and deed.

(Signature of Notary) (Date) NOTARIAL SEAL (If required)

U.S. GOVERNMENT PRINTING OFFICE : 1988—O-211-511

[Government Exhibit 6]

January 3, 1973

Tannebaum, Bindler & Lewis
1422 Metropolitan Savings Building
Dallas, Texas 75202

Gentlemen:

Please accept this as receipt for the following files of Dr. E. J. Ourso 1969, 1970 and 1971 Tax Files, Quarterly Tax Files, and Bookkeeping Files. 1970 and 1971 Financial Statements Files and 1969 Cash Disbursements.

GOVERNMENT EXHIBIT 6

Dr. E. J. Ourso

[Government Exhibit 7]

EMPLOYMENT AGREEMENT 78-

THIS EMPLOYMENT AGREEMENT entered into at Dallas, Texas this 3rd day of January, 1973, by and between CYRIL DAVID KASMIR (hereinafter referred to as "the Attorney") and JERRY A. CANDY (hereinafter referred to as "the Accountant").

W I T N E S S E T H:

WHEREAS, the Attorney has been employed by DR. EDWARD J. and RAE A. MASON (hereinafter referred to as the "Clients") to represent them in the matter of their federal income tax liabilities for the years 1969, 1970 and 1971, in connection with an audit of their income tax returns presently being made by the Internal Revenue Service, and

WHEREAS, in carrying out his duties and responsibilities pursuant to such employment the Attorney will require accounting assistance in analyzing the books, records, papers and documents which have been delivered to him by the Clients and to have accounting assistance in preparing schedules, workpapers and other documents which when prepared will represent the product of the Attorney's work in preparing and presenting the case of the Clients,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and undertakings hereinafter set forth, the Attorney and Accountant do hereby agree as follows:

1. The Attorney employs the Accountant to assist the Attorney in analyzing the books, records, papers and documents of the Clients and the business, financial and personal affairs of the Clients insofar as the Attorney may deem such assistance to be necessary in the preparation and presentation of the Client's case.

2. The Attorney agrees to pay the Accountant a reasonable fee for all such services actually rendered and performed by the Accountant pursuant to the Attorney's request.

3. (a) All books of account, records, papers and other documents belonging to the Clients and all memoranda, workpapers or other documents prepared by the Attorney which pertain to the affairs of the Clients which may be delivered by the Attorney to the Accountant in the course of the Accountant's employment shall be and remain the property of the Clients or the Attorney, as the case may be, and the Accountant shall be the gratuitous bailee thereof.

(b) All notes, workpapers, schedules, analyses and other documents prepared by the Accountant for use by the Attorney in the presentation of the Clients' case shall become the property of the Attorney immediately upon their preparation by the Accountant, whether or not such documents are complete or incomplete and irrespective of who purchased or paid for the component parts thereof, in the same manner and to the same extent as though such documents had been prepared by the Attorney and the component parts thereof purchased and paid for by the Attorney, and the Accountant shall be the gratuitous bailee thereof.

(c) Under no circumstances shall the accountant permit anyone other than the Attorney to examine, inspect or copy or take possession of any of the records and documents referred to in paragraphs 3 (a) and 3 (b) hereof.

4. The bailment to the Accountant of all records and documents referred to in paragraph 3 above shall be automatically revoked and the Accountant shall at once deliver to the Attorney all such records and documents upon the happening of any one of the following events:

(a) A request by the Attorney for the return of such records and documents;

(b) The exhibition to or surrender of any of such records and documents by the Accountant to anyone other than the Attorney;

(c) A request by anyone other than the Attorney (including, but without being limited to, a creditor of the Clients and

a representative of any agency of the United States Government) to examine, inspect or copy any of such records and documents, or for the possession of any of such records and documents;

(d) Any attempt to serve, or the actual service of, any court order, subpoena or summons, or any administrative subpoena or summons upon the Accountant which rpquires or purports to require him to produce any of such records and documents.

5. Should any litigation result from the failure or refusal of the Accountant to comply with the requests, orders, subpoenas or summons referred to in paragraphs 4 (c) and 4 (d) hereof, the Attorney agrees, if requested by the Accountant, to defend the Accountant in such litigation at the Attorney's cost and expense.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto the day and year first above written.

CYRIL DAVID KASMIR
ATTORNEY

JERRY A. CANDY
ACCOUNTANT

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and JAMES S. MABREY, Special Agent, Internal Revenue Service, PETITIONERS v. C. D. KASMIR and JERRY A. CANDY, RESPONDENTS	Civil Action No. CA-3-6973-D (Filed: March 28, 1973)

This matter having come on for hearing before the undersigned on March 28, 1973, pursuant to the petition and affidavit of petitioners and on order of the District Court to show cause, the parties having been heard and the Court finding that the records described in the two Internal Revenue summonses at issue belong to the accounting firm of Tannebaum, Binder, and Lewis and are in possession of the respondent, C. D. Kasmir, it is

ORDERED that C. D. Kasmir obey the summons served upon him on January 5, 1973, by the petitioner, Special Agent James A. Mabrey, by appearing before Special Agent Mabrey on April 16, 1973, at 10:00 A.M., at room 11G47, 1100 Commerce, Dallas, Texas, then and there to produce for inspection all of the accountant's work papers, reports, tax returns and documents described in the aforementioned summons. It is further

ORDERED that the respondent, Jerry A. Candy, obey the summons served upon him on January 5, 1973, by Special Agent Mabrey, by appearing before the said agent at the same time and place as C. D. KASMIR, then and there to testify as concerns the described accountant's records.

s/ Robert M. Hill

UNITED STATES DISTRICT JUDGE

Dated: March 28, 1973

MOTION FOR STAY

(Number and title omitted) (Filed: April 6, 1973)

The Respondents, C. D. KASMIR and JERRY A. CANDY, move the Court to stay enforcement of its Order in this action pending the disposition of the Respondents' appeal to the United States Court of Appeals for the Fifth Circuit and for that purpose to fix the amount of the bond required to be filed by the Respondents.

AKIN, GUMP, STRAUSS, HAUER & FELD
2800 Republic National Bank Building
Dallas, Texas 75201
741-2111

By s/ Edward A. Copley
EDWARD R. COPLEY

ATTORNEY FOR THE RESPONDENTS

FISCHMAN, ROSENBERG, KASMIR & WILLINGHAM
601 Kirby Building
Dallas, Texas 75201
744-5511

By s/ Cyril David Kasmir
CYRIL DAVID KASMIR
PRO SE

ORDER GRANTING STAY

(Number and title omitted) (Filed: April 6, 1973)

This cause came on to be heard on the Motion of the Respondents, C. D. KASMIR and JERRY A. CANDY, for a stay pending the Respondents' appeal to the United States Court of Appeals for the Fifth Circuit, and it appearing to the Court that the Respondents are entitled to such a stay, it is

ORDERED that the compliance with, the execution of and any proceedings to enforce the Order entered herein on March 28, 1973, be stayed pending the determination of the Respondents' appeal from such Order, provided that

the Respondents post a cash deposit in the sum of $250.00, in lieu of a bond, on or before April 9th, 1973.

DATED: April 6th, 1973.

s/ Robert M. Hill
UNITED STATES DISTRICT JUDGE

RESPONDENT'S BOND

(Number and title omitted) (Filed: April 16, 1973)

WHEREAS C. D. KASMIR and JERRY A. CANDY have requested and the Court has issued an Order Granting Stay whereby the compliance with, the execution of and any proceedings to enforce the Order entered herein on March 28, 1973, were stayed pending the determination of the Respondent's appeal from said Order, provided that the Respondents post a cash deposit in the sum of $250.00, in lieu of bond, on or before April 9, 1973.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that C. D. KASMIR and JERRY A. CANDY, the Respondents, do hereby acknowledge that they have deposited with the office of the United States District Clerk at Dallas the sum of TWO HUNDRED FIFTY DOLLARS AND NO/100 ($250.00), in cash, on April 6, 1973, pursuant to the Order of this Court.

FISCHMAN, ROSENBERG, KASMIR & WILLINGHAM
601 Kirby Building
Dallas, Texas 75201
744-5511
By s/ Cyril David Kasmir
CYRIL DAVID KASMIR

Approved this the 16th
day of April, A.D., 1973.
UNITED STATES DISTRICT COURT CLERK FOR THE NORTHERN DISTRICT OF TEXAS AT DALLAS
By s/ Harriet Wilson
Deputy Clerk

NOTICE OF APPEAL

(Number and title omitted) (Filed: April 16, 1973)

Notice is hereby given that C. D. KASMIR and JERRY A. CANDY, the Respondents above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Order directing the Respondents to obey the summons served upon them by Special Agent JAMES A. MABREY entered in this action on the 28th day of March, 1973.

DATED: April 16th, 1973.

AKIN, GUMP, STRAUSS, HAUER & FELD
2800 Republic National Bank Building
Dallas, Texas 75201
741-2111

By: s/ Edward A. Copley
EDWARD A. COPLEY
ATTORNEY FOR THE RESPONDENTS

FISCHMAN, ROSENBERG, KASMIR & WILLINGHAM
601 Kirby Building
Dallas, Texas 75201
744-5511

By: s/ Cyril David Kasmir
CYRIL DAVID KASMIR
PRO SE

SUPREME COURT OF THE UNITED STATES

No. 74-611

UNITED STATES et al.,
PETITIONERS,

v.

C. D. KASMIR AND JERRY A. CANDY

ORDER ALLOWING CERTIORARI. Filed January 27, 1975.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 74-18 and a total of one hour is allotted for oral argument.

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U.S. Government Printing Office: 1975—570-881/124